TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

(23,655)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 157.

GEORGE F. KREITLEIN, PLAINTIFF IN ERROR,

vs.

CHARLES FERGER.

IN ERROR TO THE APPELLATE COURT OF THE STATE OF INDIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 11, 1914.

1 STATE OF INDIANA:

In the Appellate Court.

Be it remembered that heretofore to-wit: on the 23rd day of December, 1909, the same being the 16th Judicial Day of the November Term, 1909, of said Appellate Court, George F. Kreitlein by his attorneys, Jesse D. Hamrick, Wm. P. Herod and Elam, Fesler & Elam, filed in the office of the Clerk of said Appellate Court of said State of Indiana, a transcript of the record and proceedings had in the Marion Superior Court (75562), of said State of Indiana in a cause wherein George F. Kreitlein was the Appellant and Charles Ferger was the Appellee, together with an assignment of errors, precipe, notice, Application for Supersedeas and briefs. Supersedeas granted and issued.

2 & 3 Be it remembered, that among the records of proceedings had and papers filed in the Superior Court of Marion County, Indiana, are the following in the cause of

No. 75562.

CHARLES FERGER
vs.
GEORGE F. KREITLEIN.

Be it also remembered, That heretofore to-wit: on the 20th day of February, 1908, the above named plaintiff, by counsel, filed in the office of the clerk of said court, a complaint against the said defendant, which complaint is in the words and figures as follows:

Complaint Filed.

4 STATE OF INDIANA,
Marion County, ss:

In the Superior Court, Marion County.

Room —.

No. —.

CHARLES FERGER
vs.
GEORGE F. KREITLEIN.

Complaint.

The plaintiff Charles Ferger complains of the defendant George F. Kreitlein, and says:

That heretofore on the 23d day of November, 1897, this plaintiff recovered a judgment against the defendant in this action in the Superior Court, of Marion County, State of Indiana, for the sum of three hundred dollars, as damages and the costs of the action taxed at — dollars.

Plaintiff further says that said judgment was duly rendered and given, and was not for any debt growing out of or founded upon a contract, express or implied, and that the same is due, and no part thereof has been paid.

Wherefore plaintiff prays judgment against the defendant in the sum of seven hundred dollars, without exemption, and for all other proper and necessary relief.

APPLEMAN & REILEY,
For Plaintiff.

5 And afterwards to-wit: on the 19th day of March, 1908, being the 16th judicial day of the March Term, 1908, of said court, before the Hon. Lawson M. Harvey, Judge thereof, the following proceedings were had herein, viz:

Rule to Answer.

"Comes plaintiff and on his motion defendant is ruled to answer the complaint herein by next rule day."

And afterwards to-wit: on the 23d day of March, 1908, being the 19th judicial day of the March Term, 1908, of said Court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Answer Filed.

"Comes defendant and files its answer to the complaint herein, as follows:

Marion Superior Court.

Room 4.

No. 75562.

CHARLES FERGER
vs.
GEORGE KREITLEIN.

Answer, 1st Paragraph.

The defendant, George Kreitlein, for answer to plaintiff's complaint says: That he denies each and every material allegation therein contained.

Answer, 2nd Paragraph.

The defendant, George F. Kreitlein, for second paragraph of answer to plaintiff's complaint says, that he admits that upon the

date stated in plaintiff's complaint, the plaintiff did obtain a judgment against him, the defendant, for the amount stated
6 in said complaint, but defendant further says: That afterwards in the United States District Court in and for the District of Indiana, the defendant having been duly adjudged a bankrupt, he was, by the decree and order of said *United States* District Court of the United States, sitting as a Court of Bankruptcy, granted a discharge from all debts provable against his estate, and that the indebtedness represented by said judgment of the plaintiff against the defendant, was at that time an existing indebtedness and was at the time of the granting of the said discharge and at the time the defendant was adjudged a bankrupt, a debt duly provable against the estate of defendant.

Answer, 3rd Paragraph.

The defendant, George F. Kreitlein, for third paragraph of answer to plaintiff's complaint, says: That he admits that the plaintiff did upon the date stated in plaintiff's complaint, obtain a judgment against the defendant as in said complaint alleged, but plaintiff further says: That on the — day of —— 19—, he filed a petition in the District Court of the United States for the District of Indiana, wherein he alleged that he resided and had resided for six months or more, next proceeding the filing of said petition at the city of Indianapolis, State of Indiana, and within said Indiana District; that he owed debts which he was unable to pay, and that he was willing to surrender all his property for the benefit
7 of his creditors, except such as was exempt by law from execution, and desired to obtain the benefit of the Acts of Congress of the United States relating to bankruptcy; and that he also with said petition, filed verified schedules containing a full, true statement of his debts so far as it was possible to ascertain, the names, and places of residences of his creditors, and such further statements concerning his said debts as were required by the laws of the United States relating to bankruptcy; and that at the same time, the defendant also filed an inventory and schedule of all his property, both real and personal, and such further statements as were required by the provisions of said law; That upon the — day of —— 19—, this defendant was by said court and the Judge thereof, duly adjudged a bankrupt, and that thereafter on the — day of —— 19—, the defendant filed his petition in said Court, praying a discharge from all his debts, except such as were excepted by law.

Defendant avers that all of his creditors, including the plaintiff and all other parties, were duly notified as provided by the bankrupt laws of the United States, to appear in the various proceedings in said bankruptcy Court, upon the various petitions of this defendant, and were notified to show cause, if any they had, why the petition of the defendant for a discharge from his debts should not be granted; that such proceedings were taken in said Court;
8 That thereafter, upon the — day of —— 19—, the order and decree of said Court was entered and issued, discharging

this defendant under said laws of the United States relating to bankruptcy, from all debts provable against his estate, which existed at the time of his adjudication as a bankrupt; that the cause of action sued upon in plaintiff's complaint was due and owing to plaintiff but defendant filed his petition in bankruptcy and was due and owing at the time he was adjudged a bankrupt, and at the time he was granted his discharge. The same existed as a provable debt against the said estate and was included in his schedule of indebtedness filed under the provisions of the Bankruptcy Act, and that defendant was fully discharged from any liability on said indebtedness, by said action of said District Court of the United States, sitting as a Court of Bankruptcy upon the said petitions of defendant.

WILLIAM P. HEROD,
Attorney for Defendant.

Rule to Reply.

And on motion plaintiff is ruled to reply to same by next rule day."

9 And afterwards to-wit: on the 9th day of April, 1908, being the 4th judicial day of the April Term, 1908, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Demurrer to Answer Filed.

"Comes plaintiff and files its demurrer to the second and third paragraphs of defendant's answer herein, as follows:

STATE OF INDIANA,
County of Marion, ss:

In the Marion Superior Court.

CHARLES FERGER
vs.
GEORGE KREITLEIN.

Demurrer to 2nd & 3rd Paragraphs of Answer.

Comes now the plaintiff and demurs separately and severally to the second and third paragraphs of defendant's answer herein, and for ground of demurrer says that neither of said paragraphs state facts sufficient to constitute a cause of defense to plaintiff's complaint and to the cause of action stated in plaintiff's complaint.

APPLEMAN & REILEY,
Attorneys for Plaintiff.

10 And afterwards to-wit: on the 11th day of June, 1908, being the 10th judicial day of the June Term, 1908 of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Demurrer Overruled.

"Come the parties and the court being fully advised now overrules plaintiff's demurrer to defendant's answer to the complaint herein, to which ruling of the court plaintiff at the time excepts and is ruled to reply to the answer of defendant on next rule day."

And afterwards to-wit: on the 30th day of June, 1908, being the 26th judicial day of the June Term, 1908, of said court, before the Hon. Lawson M. Harvey, John L. McMaster, James M. Leathers, Vinson Carter and Charles T. Hanna, Judges thereof, the following proceedings were had herein, viz:

Special Term Ordered.

"Ordered that Special Terms of this Court, be held in Rooms Nos. 1, 3, 4 and 5 thereof in the month of July, 1908, as follows: In rooms 4 and 5 commencing on the first Monday in July 1908 and in rooms 1 and 3 commencing on the second Monday in July 1908.

Said Special Terms shall be held in said rooms for the transaction of business pending therein and shall continue from day to day so long as the business so pending therein shall require."

11 And afterwards to-wit: on the 7th day of August, 1908, being the 5th judicial day of the Special August Term, 1908, of said court, before the Hon. Lawson M. Harvey, Judge presiding in Room — thereof, the following proceedings were had herein, viz:

Appointment of Judge pro Tem.

V. G. Clifford Appointed Special Judge.

I, Lawson M. Harvey, Judge of the Superior Court being unable to serve on account of absence from the City do hereby appoint Vincent G. Clifford Judge Pro Tem. of said Court to serve until my return.

(Signed) L. M. HARVEY, *Judge.*

Oath of Judge pro Tem.

Oath of Special Judge.

I, Vincent G. Clifford, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of

Indiana and honestly and faithfully perform the duties of Judge Pro Tem of the Superior Court of Marion County, Indiana, to the best of my ability, so help me God."

(Signed) VINCENT G. CLIFFORD.

Subscribed and sworn to before me this 7th day of August, 1908.

LEONARD M. QUILL, *Clerk.*

12 And afterwards to-wit: on the 8th day of September, 1908, being the 2d judicial day of the September term 1908, of said court, before the Hon. Vincent G. Clifford Judge Pro Tem thereof, the following proceedings were had herein, viz:

Reply Filed.

"Comes plaintiff and files his reply in general denial to the defendant's answer herein, as follows:

STATE OF INDIANA,
County of Marion, ss:

In the Superior Court.

#75562.

CHARLES FERGER
vs.
GEORGE KREITLEIN.

Reply.

The plaintiff Charles Ferger, for reply to the defendant's answer herein says: That he denies each and every allegation therein contained in each and every paragraph of answer.

APPLEMAN & REILEY.

And afterwards to-wit: on the 12th day of May, 1909, being the 9th judicial day of the May Term, 1909 of said court, before the Hon. Clarence E. Weir, Judge thereof, the following proceedings were had herein, viz:

Cause Submitted.

"Come the parties and this cause being at issue is now sub-
12½ mitted to the court for trial finding and judgment.

And the evidence and argument of counsel having been heard the court now takes this cause under advisement.

And afterwards to-wit: on the 3d day of July, 1909, being the 24th judicial day of the June term, 1909, of said court, before the

same Hon. Judge thereof, the following proceedings were had herein, viz:

Finding for Plaintiff.

"Come the parties and the court having heretofore taken this matter under advisement, and being now duly advised finds for plaintiff herein and that he is entitled to recover from defendant the sum of $508.50 without relief from valuation or appraisement laws.

Judgment.

It is therefore considered and adjudged by the court that plaintiff recover of and from defendant the sum of $508.50 as and for his damage herein, without relief from valuation or appraisement laws together with the costs of this action taxed at $—.

And afterwards to-wit: on the 6th day of September, 1909 being the 1st judicial day of the September Term 1909 of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Motion for New Trial Filed.

"Comes defendant and files his motion for a new trial herein, as follows:

(Motion afterwards re-filed.)

13 And afterwards to-wit: on the 13th day of September, 1909, being the 7th judicial day of the September term 1909, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

"Comes defendant and now by leave of court re-files his motion for a new trial herein, as follows:

STATE OF INDIANA,
County of Marion, ss:

Marion Superior Court.

Room 4.

No. 75562.

CHARLES FERGER
VS.
GEORGE F. KREITLEIN.

Motion for New Trial.

The defendant, George F. Kreitlein, respectfully moves the Court for a new trial of the above entitled cause, for the following reasons:

1. The decision of the Court is not sustained by sufficient evidence:
2. The decision of the Court is contrary to law.

WILLIAM P. HEROD,
Attorney for Defendant.

14 And afterwards to-wit: on the 11th day of October, 1909, being the 7th judicial day of the October term 1909, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Motion for New Trial Overruled.

"Come the parties and the court being duly advised now overrules the motion for a new trial herein, to which ruling defendant at the time excepts and 60 days are given in which to file a bill of exceptions herein."

And afterwards to-wit: on the 9th day of December, 1909, being the 4th judicial day of the December Term 1909, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Bill of Exceptions Tendered and Filed.

"Comes defendant and tenders to the court his bill of exceptions herein and requests that the same be signed, sealed and made a part of the record herein, and the court having examined the same and being duly advised now approves the same, which being signed and sealed is now filed and made a part of the record herein, the same being as follows:

15 STATE OF INDIANA,
County of Marion, ss:

In the Marion Superior Court, May Term, 1909.

Room 4.

No. 75562.

CHARLES FERGER
v.
GEORGE F. KREITLEIN.

Appearances:

Appleman & Reiley, for Plaintiff.
William P. Herod, for Defendant.

Filed Dec. 10, 1909. Leonard M. Quill, Clerk.
O. K.
C. W. APPLEMAN.

16 STATE OF INDIANA,
County of Marion, ss:

In the Marion Superior Court, May Term, 1909.

Room 4.

No. 75562.

CHARLES FERGER
v.
GEORGE F. KREITLEIN.

Be it Remembered, That on the 12th day of May, 1909, the same being the — judicial day of the May Term, 1909, of the Superior Court of Marion County, State of Indiana, the following proceedings were had in the above entitled cause, before the Honorable Clarence E. Weir, Judge of said Court, to-wit:

The cause being at issue, the same came on for trial before the Court, Appleman & Reiley appearing as counsel for the plaintiff, and William P. Herod appearing as counsel for the defendant.

And be it Remembered, That before the trial was begun, for the purpose of facilitating and expediting the trial of said cause, said Judge required to be present Lulu M. Grayson, official Reporter of said Court, to take down in shorthand the oral evidence, including both questions and answers, and note all rulings of the Court in respect to the admission and rejection of evidence, and the
17 objections and exceptions thereto, and the documentary evidence, on the trial of said cause, the said Lulu M. Grayson having been, at the time of her appointment, duly sworn to faithfully perform her duties as such Official Shorthand Reporter, which said appointment, and her official oath, as such Reporter, are among the records of said court.

And be it further Remembered, That said Official Reporter was present and took down in shorthand the oral and documentary evidence given upon the trial of said cause, including both questions and answers, and noted all of the objections made to the admission of evidence, all of the rulings of the court with respect to the admission and rejection of evidence, and the exceptions taken thereto.

And the defendant having requested said Official Reporter to furnish him with a complete transcript of said evidence, objections, rulings of the Court thereon, and the exceptions taken thereto, including all documentary evidence, a typewritten transcript of the same was made by said Official Reporter, and which typewritten transcript is in the words and figures following, That is to say:

The Plaintiff to maintain the issues on his behalf, offered and introduced the following evidence, to-wit:

18 *Plaintiff's Evidence.*

Mr. APPLEMAN: The plaintiff introduces in evidence the judgment which is found in Order Book numbered 223, at page 199,

Charles Ferger v. George F. Kreitlein, No. 51613 Superior Court, Room 2, November 23rd, 1897, which reads as follows, to-wit:

"No. 51613.

CHARLES FERGER
v.
GEORGE F. KREITLEIN.

Plaintiff's Evidence—Alleged Judgment.

Come the parties, and the Court having heretofore heard the argument on defendant's motion for judgment upon the answers of the jury to the interrogatories, notwithstanding the general verdict, and now being fully advised in the premises, overrules the same, to which ruling of the Court defendant at the time excepts, and sixty days are granted defendant within which to file bill of exceptions.

Come again the parties, and the Court having heretofore heard the argument on defendant's motion for a new trial, and now being fully advised in the premises, overrules the same, to which ruling of the Court defendant at the time excepts, and sixty days are granted defendant within which to file bill of exceptions.

Come again the parties, and the jury having returned
19 their verdict herein, finding for the plaintiff and assessing his damages at the sum of $300.00, the Court renders judgment thereon.

It is therefore considered, adjudged and decreed by the Court that the plaintiff recover of and from the defendant herein the sum of $300.00, collectible with relief from valuation and appraisement laws, but without exemption, and costs herein expended, taxed at $—."

Plaintiff's Evidence—Testimony of Chas. Ferger.

CHARLES FERGER, the plaintiff in the above entitled cause, being first duly sworn, testified as follows:

Questions by Mr. APPLEMAN:

Q. You may state your name.
A. Charles Ferger.
Q. You are the plaintiff in this case?
A. Yes sir.
Q. You hold a judgment against the defendant, George Kreitlein?
A. Yes sir.
Q. Did you ever receive the judgment; has that judgment of $300.00 ever been paid?
A. No sir.
Q. You have only one judgment?
A. Yes sir.

Q. And that is the $300.00 judgment referred to in the
20 complaint?
A. Yes sir.

Cross-examination.

Questions by Mr. HEROD:

Q. You knew, didn't you, that Mr. Kreitlein went through bankruptcy?
A. I didn't until lately.
Q. Did you ever get any notice about it at all?
A. No sir.
Q. At the time he went through bankruptcy, did you know he was in bankruptcy?
A. I never knew he went through bankruptcy.

(Witness excused.
And the plaintiff here rested.

DEFENDANT'S EVIDENCE.

Defendant's Evidence, Verdict and Answers to Interrogatories.

Mr. HEROD: We now offer in evidence, Your Honor, pages 568, 569, 570, 571 and 572 of Order Book numbered 214, Marion Superior Court, containing the record of the verdict and answers of the jury to interrogatories, in cause No. 51613, Charles Ferger v. George F. Kreitlein, the case in which judgment was rendered which is sued upon in this action, reading as follows:

21 No. 51613.

CHARLES FERGER
vs.
GEORGE F. KREITLEIN.

Defendant's Evidence.

Come again the parties, in person and by their respective counsel, and have also come again the jurors impaneled in this cause, and the trial hereof is resumed, and the argument of counsel having been concluded, the Court now delivers its instructions to the jurors and submits interrogatories to be answered and returned with their general verdict, who retire to their room to consult of their verdict, under charge of their bailiff, duly sworn as such, according to law, and the instructions given by the Court, together with those tendered and refused, with the exceptions taken at the time noted thereon are filed and made a part of the record in this cause, and are in the following words and figures, to-wit (H. I.)

And the jurors of the jury aforesaid having agreed upon their verdict return the same into open Court, and after having been

read, it appearing that the jury failed to answer interrogatory No. 21, the Court now gives an additional instruction to the jury, who again retire to their room to consult of their verdidct, under charge of their bailiff, duly sworn as such, according to law, and the additional instruction given by the Court is filed and made a part of the record in this cause, and is in the following words and
22 figures to-wit (H. I.)

And the jurors of the jury aforesaid having agreed upon their verdict return the same into open Court, in these words and figures:

Defendant's Evidence—Verdict.

We the jury find for the plaintiff and assess his damages at three hundred ($300) dollars.

E. B. TWYMAN, *Foreman.*

Defendant's Evidence—Answers to Interrogatories.

And the jurors also return the interrogatories and answers thereto, as follows:

1. Was the defendant, George F. Kreitlein, on the 4th, 5th, 6th and 7th days of November, 1895, insolvent?

Yes.

2. Did the defendant on said dates order from the plaintiff herein the flour described in plaintiff's complaint?

Yes.

3. Did the defendant at the time of ordering and receiving said flour from the plaintiff make any representations whatever to the plaintiff as to the defendant's financial condition?

No.

4. Did any one representing the defendant at the time of ordering and receiving said flour from the plaintiff make any representations whatever to the plaintiff as to the defendant's financial condition?

No.

23 5. Did the defendant at the time of ordering said flour and receiving the same from the plaintiff make any representations to the public generally as to his solvency or insolvency?

No.

6. Did any one representing the defendant at the time of ordering said flour and receiving the same from the plaintiff make any representations to the public generally as to the solvency or insolvency of defendant?

No.

7. Did the defendant prior to the time of ordering said flour and receiving the same from the plaintiff make any representations to the public generally as to his solvency or insolvency?

No.

8. Did any one representing defendant, prior to the ordering of said flour and receiving the same from the plaintiff, make any

representations to the public generally as to defendant's solvency or insolvency?

No.

9. Had the defendant at the time of ordering and receiving the flour described in the complaint from plaintiff made any representations to the plaintiff as to his solvency or insolvency which were false?

No.

10. Had any one representing the defendant at the time
24 of ordering and receiving the flour described in the complaint from plaintiff made any representations to the plaintiff as to the solvency or insolvency of defendant which were false?

No.

11. Had the defendant prior to the time of ordering and receiving the flour described in the complaint from plaintiff made any representations to the plaintiff as to his solvency or insolvency which were false?

No.

12. Had any one representing the defendant prior to the time of ordering and receiving the flour described in the complaint from plaintiff made any representations to the plaintiff as to the solvency or insolvency of defendant which were false?

No.

13. Had the defendant at the time of ordering and receiving the flour described in the complaint from the plaintiff made any representations to the public generally as to his solvency or insolvency which were false?

No.

14. Had any one representing the defendant at the time of ordering and receiving the flour described in the complaint from plaintiff made any representations to the public generally as to the solvency or insolvency of defendant which were false?

25 No.

15. Had the defendant prior to the time of ordering and receiving the flour described in the complaint from plaintiff made any representations to the public generally as to his solvency or insolvency which were false?

No.

16. Had any one representing the defendant prior to the time of ordering and receiving the flour described in the complaint from the plaintiff made any representations to the public in general as to the solvency or insolvency of defendant which were false?

No.

17. Did the plaintiff in receiving the order for flour from the defendant and filling it rely upon any statements or representations made by the defendant to the plaintiff?

No.

18. Did the plaintiff in receiving the order for flour from the defendant and filling it rely upon any statements or representations made by any one representing the defendant to plaintiff?

No.

19. Did the plaintiff, in receiving the order for flour from the defendant and filling it, rely upon any statements or representations made by the defendant to the public in general?

26 No.

20. Did the plaintiff, in receiving the order for flour from the defendant, and filling it, rely upon any statements or representations made by any one representing the defendant to the public in general?

No.

21. Did the plaintiff believe that the sale of flour from himself to defendant was a sale for cash?

Yes.

22. Did the plaintiff after the sale and delivery of the flour described in the complaint to the defendant send his son to the defendant to collect for such flour?

Yes.

23 Did the son of plaintiff agree to receive and did he receive from the defendant shoes, the value of which was to be credited upon the account of the plaintiff against defendant?

Yes.

24. Did the plaintiff after the sale and delivery of the flour to defendant send an attorney to defendant who demanded payment of the account?

Yes.

25. Did the defendant promise the attorney of plaintiff and agree to pay the account at a future time, and within twenty-four hours of said agreement, and did not said attorney, for the plaintiff,

27 with knowledge of the facts under which the flour was purchased, agree to wait and did he not wait until the time promised by the defendant?

Yes.

E. B. TWYMAN, *Foreman.*

And now the jury is discharged."

Mr. HEROD: I now offer in evidence that which I have asked the Reporter to identify as Defendant's Exhibit B, being the original schedules of George F. Kreitlein filed on the 11th day of November, 1905, in the United States District Court, for the District of Indiana.

Objection.

Mr. APPLEMAN: We object to the admission of this in evidence for the reason that the testimony shows that he has not had any notice of this bankruptcy proceeding. I understand it is the law that unless he had actual knowledge and notice from the bankrupt he is not bound by the bankruptcy proceeding, and his discharge is not a bar to such an action as this, and we object for the further reason that this is an action on a judgment. The schedule shows that it is on an account. The records show that this was reduced to a judgment in 1897 and this schedule was not filed until 1905.

28 *Objection Overruled.*

The Court overruled the objection, to which ruling of the Court, plaintiff, by counsel, at the time excepted.

The schedule was marked "Defendant's Exhibit B" by the Reporter, for the purpose of identification, and was admitted and introduced and read as follows:

29 DEFENDANT'S EXHIBIT "B," L. M. G., May 12, 1909.

Defendant's Evidence m *Bankruptcy Schedules.*

UNITED STATES OF AMERICA,
District of Indiana, ss:

In the United States District Court in and for said District, —— Division.

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN, Bankrupt.

Debtor's Petition.

To the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana:

The petition of George F. Kreitlein, of Indianapolis, in the County of Marion, and District and State of Indiana, by occupation Manager, respectfully represents:

That he has resided for the greater portion of six months next immediately preceding the filing of this petition at Indianapolis, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy;

That the schedule hereto annexed, marked A, and verified
30 by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts;

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

Wherefore your petitioner prays that he may be adjudged by the Court to be a Bankrupt within the purview of said Acts.

GEORGE F. KREITLEIN, *Petitioner.*

HEROD & THOMSON,
Attorneys for Petitioner.

31 UNITED STATES OF AMERICA,
District of Indiana, State of
Indiana, County of Marion, ss:

I, George F. Kreitlein, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief.

GEORGE F. KREITLEIN, *Petitioner.*

Subscribed and sworn to before me this 9 day of November, 1905.

JOSEPH L. ROGERS,
Notary Public. [SEAL.]

My commission expires June 6, 1909.

No. —. In Bankruptcy. In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(1) *Statement of all Creditors Who Are to be Paid in Full or to Whom Priority is Secured by Law.*

Claims which have priority.	Ref'ce to ledger or voucher.	Names of creditors.	Residence. (If unknown, that fact must be stated.	Where and when contracted.	Nature and consideration of the debt and whether contracted as partner or joint contractor; and if so, with whom.	Amount.
(1) Taxes and debts owing to the United States.		None.				
(2) Taxes due and owing to the State of —— or to any Court, district or municipality thereof.		None.				
(3) Wages due workmen, clerks or servants, to an amount not exceeding $300 each, earned within three months before filing the petition.		None.				
(4) Other debts having priority by law.		None.				
Total.....						.....

GEORGE F. KREITLEIN, *Petitioner.*

33 UNITED STATES OF AMERICA,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(2) *Statement of All Creditors Holding Securities.*

Reference to ledger or voucher.	Names of creditors.	Residence. (If unknown, that fact must be stated.)	Description of securities.	When and where were debts contracted.	Value of securities.	Amount of debts.
	None.					
Total.....						.....

GEORGE F. KREITLEIN, *Petitioner.*

34 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
W. H. H. Peck Co	Cleveland, O	Indianapolis, 1895	Merchandise	$647.75
Sage & Co	Boston	Indianapolis, 1905	Merchandise	429.50
Geo. F. Daniels & Co	Boston	Indianapolis, 1895	Merchandise	981.78
McKee & Co	Indianapolis	Indianapolis, 1895	Merchandise	1,496.45
Horace M. Richardson & Co	Cincinnati	Indianapolis, 1895	Merchandise	981.78
St. John Kirkham Shoe Co	New York City	Indianapolis, 1895	Merchandise	157.85
Hamburger Bros	Cincinnati	Indianapolis, 1895	Merchandise	4,576.90
Lester Shoe Co	Campbello, Mass	Indianapolis, 1895	Merchandise	139.20
Graff Son & Co	Philadelphia	Indianapolis, 1895	Merchandise	356.40
Bering & Co	Cincinnati	Indianapolis, 1895	Merchandise	851.25
H. C. Sodman Co	Columbus, O	Indianapolis, 1895	Merchandise	93.60
Mitz & Grosskopf	Indianapolis	Indianapolis, 1895	Merchandise	39.65
Geo. E. Kimball & Co	Haverhill, Mass	Indianapolis, 1895	Merchandise	215.00
Hendricks & Cooper	Indianapolis	Indianapolis, 1895	Note	1,478.58

35 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
Ohio Valley Shoe Co	Cincinnati	Indianapolis, 1895	Merchandise	$441.00
Goodyear Rubber Co	St. Louis	Indianapolis, 1895	Merchandise	142.05
Woodward Franklin & Co	Whitmas, Mass	Indianapolis, 1895	Merchandise	455.40
Edward R. Rice	Buffalo, N. Y	Indianapolis, 1895	Merchandise	309.50
A. A. Putnam	Chicago	Indianapolis, 1895	Merchandise	4,217.40
Leonard Atkinson Co	Chicago	Indianapolis, 1895	Merchandise	371.90
Total				

GEORGE F. KREITLEIN, *Petitioner.*

36 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
			Forward.....	$.....
Thomas E. Greacen.....	New York City....	Indianapolis, 1895.....	Merchandise.....	1,229.00
C. M. Hapgood Shoe Co.....	Easton, Pa.....	Indianapolis, 1895.....	Merchandise.....	105.70
			Two notes, $500 each.	1,000.00
H. C. Brodbeck & Co.....	Indianapolis.....	Indianapolis, 1895.....	Note.....	924.00
Robt. Lahey Shoe Co.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	2,124.42
A. H. Berry Shoe Co.....	Portland, Me.....	Indianapolis, 1895.....	Merchandise.....	479.65
Haydon Guardeniar & Co.....	Boston.....	Indianapolis, 1895.....	Merchandise.....	608.40
Mineralized Rubber Co.....	New York City....	Indianapolis, 1895.....	Merchandise.....	155.00
Childs Groff & Co.....	Cleveland, O.....	Indianapolis, 1895.....	Merchandise.....	433.50
M. S. Cahill.....	Boston.....	Indianapolis, 1895.....	Merchandise.....	246.60
Goldsmith, Rosenbush & Levi...	Chicago.....	Indianapolis, 1895.....	Merchandise..	.....
James Chambers, Ltd.....	New York City....	Indianapolis, 1895.....	Merchandise.....	48.00
Geo. F. Dittman B. & Shoe Co...	St. Louis.....	Indianapolis, 1895.....	Merchandise.....	96.35

37 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
Durrell Bros	Cincinnati	Indianapolis, 1895	Merchandise	$586.50
David Hahn & Son	Cincinnati	Indianapolis, 1895	Merchandise	27.00
Johnson & Baillie	Halifax, Pa	Indianapolis, 1895	Merchandise	160.20
M. J. Worthley	Lynn, Mass	Indianapolis, 1895	Merchandise	60.00
Total				

GEORGE F. KREITLEIN, *Petitioner.*

38 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
			Forward.....	$.....
Schanroth & Co.....	Buffalo, N. Y.....	Indianapolis, 1895.....	Merchandise.....	162.00
P. Hagerty & Sons.....	Washington C. H., Ohio.	Indianapolis, 1895.....	Merchandise.....	172.65
M. D. Wells & Co.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	316.70
Foreman Shoe Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	90.00
S. Keith & Co.....	Boston.....	Indianapolis, 1895.....	Merchandise.....	245.75
Daneville Shoe Co.....	Daleville, Ind.....	Indianapolis, 1895.....	Merchandise.....	41.40
Jay B. Reynolds.....	Orange, Mass.....	Indianapolis, 1895.....	Merchandise.....	283.20
W. R. Usher & Son.....	Newburyport, Mass..	Indianapolis, 1895.....	Merchandise.....	81.60
Reynolds, Drake & Gabell.....	Brockton, Mass.....	Indianapolis, 1895.....	Merchandise.....	286.80
Rodgers Shoe Co.....	Toledo, O.....	Indianapolis, 1895.....	Merchandise.....	271.70
Continent Shoe Co.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	85.00
Elgin Dairy Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	128.04

39 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of All Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
McCune-Malott Co	Indianapolis	Indianapolis, 1895	.....	$420.21
John O'Neill	Indianapolis	Indianapolis, 1895	Merchandise	615.60
Krag-Reynolds Co	Indianapolis	Indianapolis, 1895	Merchandise	469.60
Schrader Bros	Indianapolis	Indianapolis, 1895	Merchandise	3,853.60
C. B. Farrington Co	New York	Indianapolis, 1895	Merchandise	354.39
Will H. Craig	Noblesville, Ind	Indianapolis, 1895	Merchandise	23.76
Alden Vinegar Co	St. Louis	Indianapolis, 1895	Merchandise	105.56
Plainfield Broom Co	Plainfield, Ind	Indianapolis, 1895	Merchandise	207.95
Rodgers, Lapp & Harris	Louisville	Indianapolis, 1895	Merchandise	160.00
Torbitt & Castleman	Louisville	Indianapolis, 1895	Merchandise	100.43
Meyer, Dickman & Co	Cincinnati	Indianapolis, 1895	Merchandise	172.06
Stephens & Widlar	Cleveland, O	Indianapolis, 1895	Merchandise	845.70
Total				.....

GEORGE F. KREITLEIN, *Petitioner.*

40 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
			Forward.....	$.....
Shellenberger Mill & Elevator Co.	Decatur, Ill.....	Indianapolis, 1895.....	Merchandise.....	710.84
John Guedelhofer.....	Indianapolis.....	Indjanapolis, 1895.....	Merchandise.....	38.70
Cincinnati Soap Co.....	Cincinnati.....	Indianapolis, 1895.....	Merchandise.....	27.80
G. A. Catt.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	65.93
Crystal Glass Co.....	Bridgeport, O.....	Indianapolis, 1895.....	Merchandise.....	54.63
Edwin J. Gillies & Co.....	New York.....	Indianapolis, 1895.....	Merchandise.....	331.78
Dayton Glove Co.....	Dayton, O.....	Indianapolis, 1895.....	Merchandise.....	388.71
Hall & Hayward Co.....	Louisville.....	Indianapolis, 1895.....	Merchandise.....	273.88
Wm. Archdeacon.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	14.53
Balke & Krauss Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	10.53
			Credit 2 pr. shoes.	
Mummenhoff & Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	120.46
Indiana Paper Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	169.25

41 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
Fels & Co	Philadelphia	Indianapolis, 1895	Merchandise	$173.17
Martin J. O'Reilley	Indianapolis	Indianapolis, 1895	Merchandise	10.80
Standard Oil Co	Indianapolis	Indianapolis, 1895	Merchandise	60.53
E. Keller & Co	Indianapolis	Indianapolis, 1895	Merchandise	58.37
Franklin McVeagh & Co	Chicago	Indianapolis, 1895	Merchandise	989.52
Hollweg & Reese	Indianapolis	Indianapolis, 1895	Merchandise	147.30
Seasongood Stix Krouse & Co	Cincinnati	Indianapolis, 1895	Merchandise	3,188.85
Wadsworth Salt Co	Wadsworth, O	Indianapolis, 1895	Merchandise	203.00
American Preserves Co	Louisville	Indianapolis, 1895	Merchandise	13.05
Diamond Stoneware Co	Crookville, O	Indianapolis, 1895	Merchandise	314.10
Total				

GEORGE F. KREITLEIN, *Petitioner.*

42 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
J. N. Wolfe & Co	Pittsburg, Pa	Indianapolis, 1895	Merchandise	$340.00
Tuscarora Advertising Co	Coshocton, O	Indianapolis, 1895	Merchandise	190.00
Murphy, Hibben & Co	Indianapolis	Indianapolis, 1895	Merchandise	5.13
Stein, Hirsch & Co	Chicago	Indianapolis, 1895	Merchandise	166.55
Champion Chemical Works	Chicago	Indianapolis, 1895	Merchandise	12.08
Armour & Co	Chicago	Indianapolis, 1895	Merchandise	108.44
Sprague, Warner & Co	Chicago	Indianapolis, 1895	Merchandise	643.91
W. H. Walker	Pittsburg, Pa	Indianapolis, 1895	Merchandise	167.12
Austin, Nichols & Co	New York	Indianapolis, 1895	Merchandise	359.38
Luhrman & Wilburn	Cincinnati	Indianapolis, 1895	Merchandise	21.60
Daggett & Co	Indianapolis	Indianapolis, 1895	Merchandise	56.00
Dannemillers & Co	Canton, O	Indianapolis, 1895	Merchandise	437.00
P. Sindlinger	Indianapolis	Indianapolis, 1895	Merchandise	59.52

43 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
C. Ferger	Indianapolis	Indianapolis, 1895	Merchandise	$271.85
Nelson, Morris & Co	Indianapolis	Indianapolis, 1895	Merchandise	237.38
E. J. Heraty & Co	New York	Indianapolis, 1895	Merchandise	195.00
T. T. Zerbe & Bros	Schaefferstown, Pa.	Indianapolis, 1895	Merchandise	165.50
Mountford & Co	East Liverpool, Ohio	Indianapolis, 1895	Merchandise	97.97
A. Colburn Co	Philadelphia, Pa.	Indianapolis, 1895	Merchandise	201.29
E. B. McComb	Haughville, Ind.	Indianapolis, 1895	Merchandise	60.38
Schnull & Co	Indianapolis	Indianapolis, 1895	Merchandise	84.01
J. R. Bryan & Co	Indianapolis	Indianapolis, 1895	Merchandise	30.63
Total				

GEORGE F. KREITLEIN, *Petitioner.*

UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
			Forward.....	$.....
D. Baumann	Indianapolis	Indianapolis, 1895	Merchandise	9.23
Schuylkill Mills	Philadelphia, Pa	Indianapolis, 1895	Merchandise	515.50
Arbuckle Bros	Chicago	Indianapolis, 1895	Merchandise	478.60
Hunicke Glove Co	St. Louis	Indianapolis, 1895	Merchandise	399.08
Samuel Ehrisman	Indianapolis	Indianapolis, 1895	Merchandise	32.00
Bennett, Sloan & Co	New York	Indianapolis, 1895	Merchandise	236.25
Robertson & Nichols	Indianapolis	Indianapolis, 1895	Merchandise	12.00
Indiana Coffee Co	Indianapolis	Indianapolis, 1895	Merchandise	275.52
Wabash Soap Co	Wabash, Ind	Indianapolis, 1895	Merchandise	31.50
James S. Kirk & Co	Chicago	Indianapolis, 1895	Merchandise	163.63
Climax Baking Powder Co	Indianapolis	Indianapolis, 1895	Merchandise	72.41
Moore Packing Co	Indianapolis	Indianapolis, 1895	Merchandise	152.83
W. D. Huffman Cider Co	Indianapolis	Indianapolis, 1895	Merchandise	36.17

45 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
J. C. Perry & Co	Indianapolis	Indianapolis, 1895	Merchandise	$254.10
Coffin-Fletcher & Co	Indianapolis	Indianapolis, 1895	Merchandise	486.96
Hunt Soap & Chemical Co	Indianapolis	Indianapolis, 1895	Merchandise	20.78
Heidelbach, Friedlander & Co	Cincinnati	Indianapolis, 1895	Merchandise	914.00
Levi & Kaufman	Louisville	Indianapolis, 1895	Merchandise	585.91
Phœnix Chemical W'ks	Chicago	Indianapolis, 1895	Merchandise	81.62
Rickers & Co	Milwaukee, Wis	Indianapolis, 1895	Merchandise	90.00
N. K. Fairbank Co	Chicago	Indianapolis, 1895	Merchandise	134.13
American Soap Co	Marion, Ind	Indianapolis, 1895	Merchandise	80.33
Swift Bros	Indianapolis	Indianapolis, 1895	Merchandise	32.98
Union Glass Co	Martins Ferry, O	Indianapolis, 1895	Merchandise	16.10
Total				

GEORGE F. KREITLEIN, *Petitioner.*

46 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
			Forward.....	$.....
Golden Novelty Mfg. Co.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	46.50
H. J. Heinz Co.....	Pittsburgh, Pa.....	Indianapolis, 1895.....	Merchandise.....	132.75
Trenton Match Co.....	Trenton, N. J.....	Indianapolis, 1895.....	Merchandise.....	243.50
George Hitz & Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	88.75
C. L. Deitz & Co.....	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	132.35
Dwinell, Wright & Co.....	Cincinnati.....	Indianapolis, 1895.....	Merchandise.....	203.48
Southwestern Broom Mfg. Co....	Evansville, Ind....	Indianapolis, 1895.....	Merchandise.....	29.10
Frank Diesel.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	153.45
H. Morgenthan.....	Cincinnati.....	Indianapolis, 1895.....	Merchandise.....	16.80
D. B. Scully Syrup Co.....	Chicago.....	Indianapolis, 1895.....	Merchandise.....	13.38
Michigan Condensed Milk Co...	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	3.50
Ind'pls Pickling & Preserving Co..	Indianapolis.....	Indianapolis, 1895.....	Merchandise.....	2.70

47 UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
Frank M. Talbot	Indianapolis	Indianapolis, 1895	Merchandise	$2.00
Reynolds & Reynolds	Dayton, O	Indianapolis, 1895	Merchandise	27.13
Standard Advertising Co	Coshocton, O	Indianapolis, 1895	Merchandise	75.00
Fred Sipf	Indianapolis	Indianapolis, 1895	Merchandise	1.50
Compton, Ault & Co	Cincinnati	Indianapolis, 1895	Merchandise	26.97
Rosenwald & Co	Chicago	Indianapolis, 1895	Merchandise	11.75
Potter, Parvin & Co	New York	Indianapolis, 1895	Merchandise	176.18
Pure Gold Mfg. Co	Rochester, N. Y	Indianapolis, 1895	Merchandise	46.25
Champion Stoneware Co	Canton, O	Indianapolis, 1895	Merchandise	241.15
W. H. Baab	Dallastown, Pa	Indianapolis, 1895	Merchandise	225.00
Total				

GEORGE F. KREITLEIN, *Petitioner.*

UNITED STATES DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(3) *Statement of all Creditors Whose Claims Are Unsecured.*

Names.	Residence.	Place and Date.	Nature.	Amount.
Geo. P. Gore & Co	Chicago	Indianapolis, 1895	Merchandise	$331.52
Brown Shoe Co	St. Louis, Mo	Indianapolis, 1895	Merchandise	.....
Ind'p'l's Basket Co	Indianapolis	Indianapolis, 1895	Merchandise	20.00
Eckhart & Swan	Chicago	Indianapolis, 1895	Merchandise	650.00
Indianapolis News	Indianapolis	Indianapolis, 1895	Account	380.00
Ind'p'l's Sentinel	Indianapolis	Indianapolis, 1895	Account	.....
Ind'p'l's Sun	Indianapolis	Indianapolis, 1895	Account	.....
Ind'p'l's Journal	Indianapolis	Indianapolis, 1895	Account	.....
German Telegraph	Indianapolis	Indianapolis, 1895	Account	.....
German Tribune	Indianapolis	Indianapolis, 1895	Account	.....
Emil, Wile & Co	Cincinnati	Indianapolis, 1895	Merchandise	140.00
Gillett & Co	Indianapolis	Indianapolis, 1895	Merchandise	487.99
J. D. Hamrick	Indianapolis	Indianapolis, 1895	Merchandise	.....
George Hitz	Indianapolis	Indianapolis, 1895	Merchandise	.....
Henry Warrum	Indianapolis	Indianapolis, 1895	Merchandise	15.00

GEORGE F. KREITLEIN, *Petitioner.*

49 UNITED STATES OF AMERICA,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(4) *Statement of All Liabilities on Notes or Bills Discounted Which Ought to be Paid by the Drawers, Makers, Acceptors, or Endorsers.*

Reference to ledger or voucher.	Names of holders as far as known.	Residence. (If unknown, that fact must be stated.)	Place where contracted.	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
	None.				
Total					.....

GEORGE F. KREITLEIN, *Petitioner.*

50 UNITED STATES OF AMERICA,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE A.—(5) *Statement of All Accom-odation Paper.*

Reference to ledger or voucher.	Names of holders.	Residence. (If unknown, that fact must be stated.)	Place where contracted.	Whether liability was contracted as partner or joint contractor or with any other person; and if so, with whom.	Amount.
None.					
Total.....					.....

GEORGE F. KREITLEIN, *Petitioner.*

51 UNITED STATES OF AMERICA,
District of Indiana, ss:

In the United States District Court in and for said District, — Division.

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN, Bankrupt.

Oath to Schedule.

UNITED STATES OF AMERICA,
District of Indiana, State of Indiana, County of Marion, ss:

On this 9 day of November, A. D. 1905, before me personally came George F. Kreitlein, the person mentioned in and who subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare the said Schedule to be a true statement of all his debts in accordance with the Acts of Congress relating to Bankruptcy.

GEORGE F. KREITLEIN.

Subscribed and sworn to before me this 9 day of November, 1905.

JOSEPH L. ROGERS,
Notary Public. [SEAL.]

My commission expires June 6, 1909.

52 UNITED STATES OF AMERICA,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE B.—(1) *Statement of All Real Estate.*

Location and description of all real estate owned by debtor or held by him.	Encumbrances thereon, if any, and date thereof.	Statement of particulars relating thereto.	Estimated value.
None.			
Total.....			

GEORGE F. KREITLEIN, *Petitioner.*

53 U. S. DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE B.—(2) *Statement of Personal Property.*

Classification of personal property.	Items of personal property.	Estimated value.
(*a*) Cash on hands	None.	
(*b*) Bills of exchange, promissory notes, etc	None.	
(*c*) Stock in trade	None.	
(*d*) Household goods, furniture, wearing apparel, etc.	Wearing apparel	$50.00
(*e*) Books, prints, pictures, etc..	None.	
(*f*) Horses, cows and other animals	None.	
(*g*) Carriages and other vehicles	None.	
(*h*) Farming, stock and implements of husbandry	None.	
(*i*) Shipping and shares in vessels	None.	
(*k*) Machinery, fixtures, tools, etc.	None.	
(*l*) Patents, copyrights and trade-marks	None.	
(*m*) Other personal property..	None.	
Total		$50.00

GEORGE F. KREITLEIN, *Petitioner.*

54 U. S. DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE B.—(3) *Statement of Choses in Action.*

Classification of choses in action.	Choses in action.	Estimated.
(*a*) Debts due petitioner on open account	None.	
(*b*) Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds.	None.	
(*c*) Policies of insurance....	New York Life Insurance Company	$5,000.00
	Penn Mutual Life Insurance Company, payable to wife	1,000.00
(*d*) Unliquidated claims of every nature, with their estimated value	None.	
(*e*) Deposits in Banking institutions and elsewhere	None.	
Total.....		$6,000.00

GEORGE F. KREITLEIN, *Petitioner.*

55 U. S. DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE B.—(4) *Statement of Property in Reversion, Remainder, or Expectancy, Including Property Held in Trust for the Debtor, or Subject to Any Power or Right to Dispose of or Charge.*

General interest.	Particular description.	Supposed value of my interest.
Interest in land	None.	
Personal property	None.	
Property in money, stocks, shares, bonds, annuities, etc	None.	
Rights and powers, legacies and bequests	None.	
Total		

Property heretofore conveyed for benefit of creditors.	Amount realized from proceeds of property conveyed.
What proportion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed, amount realized therefrom, and disposal of same as far as known to debtor	None.
What sum or sums have been paid to counsel, and to whom, for services rendered, or to be rendered in this bankruptcy	
Total	

GEORGE F. KREITLEIN, *Petitioner.*

56 U. S. DISTRICT COURT,
District of Indiana:

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

SCHEDULE B.—(5) *A Particular Statement of the Property Claimed as Exempted from the Operation of the Acts of Congress Relating to Bankruptcy, Giving Each Item of Property and Its Valuation, and if Any Portion of it is Real Estate, Its Location, Description, and Present Use.*

Classification.	Description.	Valuation.
Military Uniforms, arms and equipments	None.	
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the Statute of the State creating the exemption	Wearing apparel ..... As resident householder and head of family. Under Section 703 Revised Statutes of Indiana, 1881.	$50.00
Total		$50.00

GEORGE F. KREITLEIN, *Petitioner.*

57 U. S. District Court, District of Indiana.

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

Schedule B.—(6) Statement of books, papers, deeds and writings relating to bankrupt's business and estate. The following is a true list of all books, papers, deeds and writings, relating to — trade, business, dealings, estate and effects or any part thereof, which at the date of the petition are in — possession or under — custody and control, or which are in the possession or custody of any person in trust for —, or for — use, benefit or advantage; and also of all others, which have been heretofore at any time in — possession, or under — control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Classification.	Description, etc.
Books.	

GEORGE F. KREITLEIN, *Petitioner.*

58 UNITED STATES OF AMERICA,
District of Indiana, ss:

In the United States District Court in and for said District, — Division.

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN, Bankrupt.

Oath to Schedule.

UNITED STATES OF AMERICA,
District of Indiana, State of Indiana, County of Marion, ss:

On this 9 day of November, A. D. 1905, before me personally came George F. Kreitlein, the person mentioned in and who subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare the said Schedule to be a true statement of all his estate, both real and personal in accordance with the Acts of Congress relating to Bankruptcy.

GEORGE F. KREITLEIN.

Subscribed and sworn to before me this 9 day of November, A. D. 1905.

JOSEPH L. ROGERS,
Notary Public. [SEAL.]

My commission expires June 6, 1909.

59 U. S. District Court, District of Indiana.

No. —. In Bankruptcy.

In the Matter of GEORGE F. KREITLEIN.

Summary of Debts and Assets. From the Statements of the Bankrupt in Schedules A and B.

Schedule A.	1. (1) Taxes and debts due United States.	
	(2) Taxes due states, counties, districts and municipalities.	
	(3) Wages.	
Schedule A.	2. Secured claims.	
Schedule A.	3. Unsecured claims.	
Schedule A.	4. Notes and bills which ought to be paid by other parties thereto.	
Schedule A.	5. Accommodation paper.	
	Schedule A, Total,	

Schedule B. 1. Real Estate.
Schedule B. 2. (*a*) Cash on hand.
(*b*) Bills, promissory notes, and securities.
(*c*) Stock in trade.
(*d*) Household goods, etc., $50.00.
(*e*) Books, prints and pictures.
(*f*) Horses, cows and other animals.
(*g*) Carriages and other vehicles.
(*h*) Farming stock and implements.
(*i*) Shipping and shares in vessels.
(*k*) Machinery, tools, etc.
(*l*) Patents, copy-rights and trade marks.
(*m*) Other personal property.

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Schedule B. 3. (*a*) Debts due on open account.
(*b*) Stocks, negotiable bonds, etc.
(*c*) Policies of insurance, 6,000.00.
(*d*) Unliquidated claims.
(*e*) Deposits of money in banks and elsewhere.
Schedule B. 4. Property in reversion, remainder, trust, etc.
Schedule B. 5. Property claimed to be excepted.
Schedule B. 6. Books, deeds and papers.
Schedule B, Total, ——
——

(Cover of Petition:) No. 2085, In Bankruptcy. U. S. District Court for District of Indiana. In the matter of George F. Kreitlein, Bankrupt. Debtor's Petition. Filed Nov. 11, 1905, 10:55. Noble C. Butler, Clerk. Herod & Thomson, Counselors at Law, Indianapolis, Indiana.

61 Mr. HEROD: I now introduce in evidence that which I have asked the Reporter to identify as Defendant's Exhibit C, being a certified copy of Mr. Kreitlein's Discharge in Bankruptcy, which reads as follows:

"DEFENDANT'S EXHIBIT C, L. M. G., May 12, 1909.

Discharge of Bankrupt.

Defendant's Evidence. Discharge in Bankruptcy.

District Court of the United States, District of Indiana.

Whereas, George F. Kreitlein in said district, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all requirements of law in that behalf, it is therefore ordered by this Court that said George F. Kreitlein be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the

11th day of November A. D. 1905 on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness, the Honorable Albert B. Anderson, Judge of said District Court, and the seal thereof, this 11th day of November, A. D. 1905.

[SEAL.] (Signed) NOBLE C. BUTLER, *Clerk.*

A True Copy.
Attest:
NOBLE C. BUTLER, *Clerk.*"

And the defendant here rested.

62 *Stenographer's Certificate.*

STATE OF INDIANA,
County of Marion, ss:

I, Lulu M. Grayson, Official Reporter of the Superior Court of Marion County, State of Indiana, duly appointed and qualified, hereby certify, That upon the trial of this cause, wherein Charles Ferger is Plaintiff, and George F. Kreitlein is Defendant, I took down in shorthand, all of the oral evidence given, including both questions and answers, and the documentary evidence, and noted all of the objections made to the admission of evidence, the rulings of the Court as to the admission and rejection of evidence, and the exceptions taken thereto; that having been requested by the Defendant to furnish it with a Typewritten Transcript of all of said proceedings so taken and noted by me upon the trial of said cause, including all documentary evidence admitted and excluded, I prepared the foregoing transcript, and hereby certify that said transcript contains all the evidence in said cause so taken by me upon said trial, at the time and place aforesaid.

LULU M. GRAYSON,
Official Reporter, Room 4,
Superior Court, Marion County, Indiana.

And be it further remembered, That the above and foregoing Typewritten Transcript of the evidence, so taken and reported as aforesaid, contains all the evidence in said cause, with the
63 & 64 objections thereto, the rulings of the Court on such objection-, and the exceptions taken thereto, and the same is ordered to be certified to, without copying, as a part of the Record of this cause.

Certificate to Bill of Exceptions.

And be it further remembered that the defendant filed on the 6th day of September, 1909, his motion for a new trial herein, and afterwards on the 13th day of September, 1909, re-filed said motion for new trial, which said motion upon the 11th day of October, 1909,

was by the Court overruled, to which ruling of the Court the defendant at the time objected and excepted and sixty days' time was at the time by the court granted to the defendant in which to file his Bill of Exceptions.

And now on this 9th day of December, 1909, and within the time allowed by the Court, the defendant, George F. Kreitlein, tenders this his bill of exceptions containing all the evidence in said cause, the objections thereto and the rulings of the Court on such objections and the exceptions taken thereto, and asks that the same may be signed, sealed and made a part of the record in this cause, which is accordingly done this 9th day of December, 1909.

CLARENCE E. WEIR,
Judge of Superior Court of Marion County, Indiana.

Filed Dec. 10, 1909. Leonard M. Quill, Clerk.

65 *Præcipe for Transcript.*

STATE OF INDIANA,
Marion County, ss:

Marion Superior Court.

Room 4.

No. 75562.

CHARLES FERGER
vs.
GEORGE F. KREITLEIN.

Leonard M. Quill, Clerk:

Will you please make a transcript of the entire record in the above entitled cause, incorporating therein the original bill of exceptions, for appeal to the Appellate Court of the State of Indiana.

WILLIAM P. HEROD,
Attorney for Defendant.

66 *Clerk's Certificate.*

STATE OF INDIANA,
Marion County, ss:

I, Leonard M. Quill, Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify that the above and foregoing transcript contains full true and correct copies of all the papers and entries of proceedings had in the above entitled cause, as requested by the above and foregoing præcipe; and I further certify that I have incorporated in this transcript the original

Bill of Exceptions containing the evidence given in said cause, instead of a copy thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at my office in the City of Indianapolis, this 22d day of December, 1909.

[SEAL.]

LEONARD M. QUILL,
Clerk Superior Court, Marion County.

Filed Dec. 23, 1909. Edward V. Fitzpatrick, Clerk.

67 Filed Dec. 23, 1909. Edward V. Fitzpatrick, Clerk.

STATE OF INDIANA:

In the Appellate Court.

GEORGE F. KREITLEIN
versus
CHARLES FERGER.

Appeal from the Marion Superior Court.

Assignment of Errors.

The Appellant, George F. Kreitlein, says there is manifest error in the proceedings and judgment of the Court below in the above entitled cause, as shown by the record therein, in this:

1. That the Complaint does not state facts sufficient to constitute a cause of action.

2. The Court erred in over-ruling the Appellant's, the defendant below, motion for a new trial.

Appellant therefore prays that said judgment may be in all things reversed.

JESSE D. HAMRICK,
WILLIAM P. HEROD,
Attorneys for Appellant.

Filed Dec. 23, 1909. Edward V. Fitzpatrick, Clerk.

68 THE STATE OF INDIANA, *To wit:*

In the Appellate Court.

GEORGE F. KREITLEIN
vs.
CHARLES FERGER.

Appeal from the Marion Superior Court.

On application of the appellant it is ordered by the undersigned, one of the Judges of the Appellate Court, that execution and other

proceedings on the judgment of the Court below be stayed, as the law directs, whenever the appellant shall have given bond according to law.

This 23rd day of December, 1909.

DANIEL W. COMSTOCK,
Judge of the Appellate Court.

69 STATE OF INDIANA:

In the Appellate Court.

No. —.

GEORGE F. KREITLEIN, Appellant,
versus
CHARLES FERGER, Appellee.

Appeal from Marion Superior Court.

Præcipe for Notice.

The Clerk of the above Court will please issue notice of the appeal in the above entitled cause to the Appellee, Charles Ferger, residing in the City of Indianapolis, Marion County, Indiana, and the appeal being from the Marion Superior Court.

WILLIAM P. HEROD,
JESSE D. HAMRICK,
Attorneys for Appellant.

Filed Dec. 23, 1909. Edward V. Fitzpatrick, Clerk.

70 And afterwards, to-wit: on the 29th day of December, 1909, the same being the 33rd Judicial Day of the November Term, 1909, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Come now the parties by their counsel, and there is filed in this case a copy of the Appeal Bond heretofore filed with the Clerk of the Marion Superior Court in response to the application for supersedeas heretofore granted and issued in said cause.

And afterwards, to-wit: on the 24th day of January, 1910, the same being the 55th Judicial Day of the November Term, 1909, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Come now the parties by their counsel, and this cause is submitted to the court for judgment and decree as provided by the act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Appellate Court adopted in relation thereto, and notices are issued accordingly.

And afterwards, to-wit: on the 23rd Day of March, 1910, the same being the 105th Judicial Day of the November Term, 1909, of

said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellant by counsel and files his petition for additional time herein, in the words and figures following: (Here Insert).

And on the same day, the Court being sufficiently advised in the premises, grants Appellant's petition for additional time in which to file brief, in said cause, granting thirty (30) days' additional time.

71 And afterwards, to-wit: on the 22nd day of April, 1910, the same being the 131st Judicial Day of the November Term, 1909, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellant by counsel and files his petition for additional time herein, in the words and figures following: (Here Insert).

And on the same day, the Court being sufficiently advised in the premises, grants Appellant's petition for additional time in which to file brief in said cause, granting fifteen (15) days' additional time.

And afterwards, to-wit: on the 29th day of April 1910, the same being the 137th Judicial Day of the November Term 1909, of said Appellate Court, the following further pleas and proceedings were had in cause to-wit:

Comes now the Appellant by counsel and files his petition for additional time herein, in the words and figures following; (Here Insert).

And on the same day, the Court being sufficiently advised in the premises, grants Appellant's petition for additional time in which to file brief in said cause, granting thirty (30) days' additional time.

72 And afterwards, to-wit: on the 6th Day of June, 1910, the same being the 13th Judicial Day of the May Term, 1910, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellant by counsel and files his briefs (8) in the words and figures following: (Here Insert).

And afterwards, to-wit: on the 5th day of July 1910, the same being the 13th Judicial Day of the May Term 1910, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellee by counsel and files his petition for additional time herein, in the words and figures following; (Here Insert).

And on the same day, the Court being sufficiently advised in the premises, grants Appellee's petition for additional time in which to file brief, granting ten (10) days' additional time.

And afterwards, to-wit: on the 9th day of July 1910, the same being the 42nd Judicial Day of the May Term 1910, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellee by counsel, and files his brief in the words and figures following: (Here Insert.)

73 And afterwards, to-wit: on the 28th day of July 1910, the same being the 58th Judicial Day of the May Term, 1910, of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Comes now the Appellant by counsel and files his reply briefs in the words and figures following: (Here Insert).

74 And afterwards, to-wit: on the 8th day of March 1912, the same being the 89th Judicial Day of the November Term, 1911, of said Appellate Court, the following further pleas and proceedings were had herein to-wit:

Come now the parties by counsel and the Court being sufficiently advised in the premises, affirms the judgment of the Court below with the following opinion pronounced by Hottel, Judge:

(Here Insert.)

75 THE STATE OF INDIANA:

In the Appellate Court, Division Number One, November Term, 1911.

On the 8th Day of March, 1912, Being the 89th Judicial Day of said November Term, 1911.

Hon. Edward W. Felt, Chief Judge; Hon. Milton B. Hottel, Hon. David A. Myers, Judges.

No. 7507.

(75562.)

In the Case of GEORGE F. KREITLEIN
vs.
CHARLES FERGER.

Appeal from the Marion Superior Court.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Hottel, J.

76 Appellee brought this suit to recover on a prior judgment which he held against appellant. The complaint was in one paragraph, to which appellant filed a general denial, and also pleaded

a discharge in bankruptcy as a defense. Appellee replied in denial and the cause was tried by the court which rendered judgment for appellee in the sum of $508.50, without relief from valuation or appraisement laws.

The only error relied upon for reversal is the overruling of appellant's motion for a new trial, the grounds of which motion are (1) that the decision of the court is not sustained by sufficient evidence, and (2) that the decision of the court is contrary to law.

The material facts in this case are as follows: On November 23, 1897, appellee recovered a judgment against appellant in the Marion Superior Court for the sum of $300.00 and costs, and said judgment is now the basis of this action. Thereafter in 1905, appellant duly filed his petition in bankruptcy, and obtained a discharge therein, which discharge he pleaded in defense when this action was brought in 1908.

The only question presented by this appeal is whether or not the decision of the court is sustained by sufficient evidence. Upon this question the averments of the complaint are conceded to be proven. The question we have to determine, is therefore, whether or not the appellant's answer of discharge in bankruptcy is supported by the evidence. Appellant's position is that "there is no dispute in evidence", and that this court should therefore "determine that as a matter of law appellant is entitled to judgment" on the facts proven.

The only evidence introduced by plaintiff was the judgment, that part of which important to this decision is as follows: "Come again the parties, and the jury having returned their verdict herein, finding for the plaintiff and assessing his damages at the sum of $300.00, the court renders judgment thereon. It is therefore considered, adjudged and decreed by the court that the plaintiff recover of and from the defendant herein the sum of 300.00 collectible with relief from valuation and appraisement laws, but without exemption, and costs herein expended, taxed at $—". Charles Ferger testified on direct examination: "I own the above judgment and it has never been paid." On cross examination he said: "I did not know that Mr. Kreitlein went through bankruptcy until lately, and did not get any notice of it."

77 The defendant introduced in evidence the record of the verdict and answers by the jury to interrogatories in the case in which the judgment was rendered, upon which this suit was brought. There were twenty-five of these interrogatories, the answers to which, important in determining the question involved in this case, were in effect, that defendant in that case, appellant here, was on the 4th, 5th, 6th, and 7th days of November, 1895, insolvent, and that on said dates he ordered the flour described in plaintiff's complaint. That said defendant neither in person nor by or through any one representing him, either at the time of ordering said flour, or prior thereto, made any representations to the plaintiff as to defendant's financial condition; that neither the defendant nor anyone representing him had at either of said times made any representation to the public generally as to the solvency or insolvency of such defendant. That neither at the time the defendant received

said flour, nor prior thereto had he or any one representing him made any representations to the plaintiff or to the public generally as to the solvency or insolvency of the defendant which were false; that the plaintiff in receiving the order for said flour and filling the same did not rely upon any statements made to him or to the public generally by the defendant or by any one representing defendant; that the plaintiff in that suit, appellee here, believed that the sale of said flour was a sale for cash, and sent his son to collect for the same, who received from the defendant shoes, the value of which was to be credited upon the account of plaintiff against defendant; that plaintiff, after the sale of said flour, sent an attorney to defendant who demanded payment of the account, to whom the defendant made a promise to pay the account within twenty-four hours, and said attorney, with knowledge of the facts under which the flour was purchased, agreed to wait and did wait until the time promised by defendant.

The appellant also introduced in evidence the original petition and schedules filed therewith in the bankruptcy proceedings of November 11, 1905. In the schedule, which was a statement of all creditors whose claims were unsecured, appears under the heading "Names—" "C. Ferger;" under the heading "Residence," "Indianapolis;" under the heading "Place and Date" "Indianapolis, 1895;" under the heading "Nature," "Merchandise;" under the heading "Amount", "$271.85." The discharge in bankruptcy completed appellant's evidence, and it is as follows: "Whereas, George F. Kreitlein, in said district, has been duly asjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to
78 have conformed to all requirements of law in that behalf, it is therefore ordered by this court that said George F. Kreitlein be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 11th day of November, A. D. 1905, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy." This discharge was evidence of the jurisdiction of the court and the regularity of the proceedings in the bankruptcy case, and the fact that such order of discharge was made therein. Bankruptcy Act, sec. 21, cf.; Hays v. Ford, 55 Ind. 52; Begrim v. Brehm, 123 Ind. 160; Graber v. Gault, 103 N. Y. 511, 515.

The provisions of the Bankruptcy Act of 1898 as amended in 1903, applicable to the questions presented by this appeal, are as follows:

1st. SEC. 17 of said act: "Debts not affected by a Discharge.—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as * * * (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; * * *."

2nd. SEC. 63 (*a*) 1. "Debts which may be Proved.—Debts of the bankrupt may be proved and allowed against his estate which are: (1) Fixed Liability. A fixed liability, as evidenced by a judg-

ment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest."

3rd. That part of subdivision 8 of sec. 7 which provides that the bankrupt shall, "Prepare, make oath to, and file in court within ten days, * * * a list of his creditors, showing their residences, if known; if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to."

Other sections provide for notcies to be given to the creditors of the bankrupt of certain steps to be taken in such proceedings, the notices to be sent by the referee*e* in bankruptcy by mail to the "respective addresses" of such creditors "as they appear in the list of creditors of the bankrupt or as afterwards filed with the
79 papers in the case by the creditors unless they waive notice in writing." See section 58 and also section 33 subdivision 4.

In addition to the above is a general order number five, which provides: "that all of the schedules' shall be printed or written out plainly without abbreviation of interlineation, except when such abbreviation or interlineation may be for the purpose of reference."

It will be seen from these provisions that a discharge in bankruptcy does not operate as a discharge of all the debts of such bankrupt but that he shall be released from all of his provable debts except those therein specially provided. The debt herein sued upon was a judgment and under section 63 (*a*) 1 above was a provable debt.

It is insisted by appellant that the burden of proof is upon the appellee to prove that the debt sued upon was included in any of the classes excepted from the discharge. Upon this question there is some conflict in the authorities both in our own state, and in other jurisdictions. Under the bankruptcy law of 1841 our Supreme Court in the case of Sorden v. Gatewood, 11 Ind. 107 expressly held that the burden of proof in such a case is upon the bankrupt who pleads and relies upon his discharge. This case has never been expressly overruled and has been cited in the following cases: Bivens v. Newcomb, 11 Ind. 98; Slaughter v. Detiney, 10 Ind. 105; Donald v. Kell, 111 Ind. 1-4; Madison Township v. Dunkle, 114 Ind. 265.

In this connection it is proper to say that while the case of Sorden v. Gatewood has never been expressly overruled by our Supreme Court, some doubt has been cast upon it as an authority upon this particular question by the later case of Goddin v. Neal, 99 Ind. 334.

In view, however, of our conclusion upon the other questions presented by the appeal, we do not deem it important or necessary in this case to determine upon whom rested the burden of proof as to said question.

Under the provision of section 17 supra (3) the discharge in bankruptcy did not affect such debts of the bankrupt as had not been "duly scheduled" in time for proof and allowance with the name of the creditor, if known to the bankrupt, unless "such cred-

itor had actual knowledge of the proceeding in bankruptcy," and subdivision 8 of section 7 of said act, supra, provides that such bankrupt in his said list of creditors "shall show their residences if known, if unknown that fact to be stated." There can be no question
under any of the authorities construing said provisions but
80 that it was at least necessary that such schedule should contain the name of such creditor or that such creditor should have actual knowledge of the proceedings, before it could be said that a discharge under such act would be a release as to such creditor. Marshall v. English Amer. etc., Co., 127 Ga., 376; Custard v. Wigderson, 130 Wis., 412; Columbia Bank v. Birkett, 174 N. Y., 112.

In this state the initial of the given name alone and unexplained is not recognized as a name. Bascom v. Turner, 5 Ind. App. 229; Shearer v. Peale & Co. 9 Ind. App. 282-286; Louden v. Walpole, 1 Ind. 319.

The other section providing that the schedule should also contain the residences of such creditors not being a part of the section providing the debts to be affected by the discharge and the exceptions therefrom, there is ground for holding that such statement of the residence is not a condition, the performance of which is necessary to prevent the operation of the discharge, and our attention is called to the case of Steele v. Thalheimer, 74 Ark. 518, which so holds. There are other cases, however, holding to the contrary, Columbia Bank v. Birkett, 174 N. Y. 112; Haack v. Theise, 99 N. Y. Supp. 905.

The purpose of this provision is manifest. The law of 1898 is different from the bankruptcy laws of 1841 and 1867 in the matter of the manner and kind of notice to be given the creditors of such bankrupt. The law of 1898 provides for individual notices of the proceedings in bankruptcy to be given to each of said creditors by mail, and the purpose of requiring the bankrupt to furnish the names and residences of his creditors is that the referee may have the information necessary to give such notices. These notices are important, and it is necessary that the bankrupt be as accurate and certain as he can be in the furnishing of said information in order that the provisions for the personal notice to the individual creditors required by the act be complied with. If he withholds, or for any reason fails to accurately and correctly perform this duty required by the statute the provision of such notice may be thereby defeated. "One of the fundamental principles in the jurisprudence of this country is that no man can be deprived of any legal right by a judicial proceeding to which he is not a party, and of which he has not received lawful notice or had actual knowledge." In re Monroe, Fed. Reporter, Vol. 114, 398, p. 399.

The court in this case just cited says further: "Creditors who have not been notified of the proceedings in the manner prescribed by
the bankruptcy law are not estopped from asserting their
81 rights by reason of mere failure on their part to be diligent in discovering the insolvency of their debtors or their resort to a court of bankruptcy."

In the case of Columbia Bank v. Birkett, 174 N. Y. 112, p. 117 the court said: "The schedule of debts, which the bankrupt is to file with his petition, furnishes the basis for the notices which the referee, or the court, is to give thereafter to the creditors, and, thus, the bankrupt appears to be made responsible for the correctness of the list of his creditors. That he is to suffer in the case of his failure to state the name of the creditor, to whom his debt is due, if known to him, seems to me very clear from the reading of section 17 of the act. * * * I think it was intended that the decree discharging the voluntary bankrupt should be confined in its operations to the creditors, who had been duly listed and who were enabled to receive the notices which the act provides for."

Upon the question of the sufficiency of the statement in the schedule of the residence or address of the creditors where they reside in large cities see: Haack v. Theise, 99 N. Y. Supp. 905; Cagliostro v. Indelli, 102 N. Y. Supp. 918.

As a matter of fact the proof shows that the information furnished in his schedule by appellant did not result in appellee's getting notice of said bankruptcy proceedings. We are of the opinion that under the authorities cited and quoted from that the appellee's debt was not duly scheduled according to the letter and spirit of said provisions of the bankruptcy act. But there is another reason why this judgment upon its merits is correct. Under the answers of appellant the burden was upon him to prove that the debt which he listed in his said schedule of creditor was the debt of appellee herein sued upon. The proof upon this subject shows that the debt *is* listed by appellant in 1905 in said bankruptcy proceeding was the debt of C. Ferger for $271.85 for merchandise. This suit was upon a judgment rendered on the 23rd day of November 1897 for $300.00 amounting at the time of the judgment herein to $508.50. The record of said former judgment showed it to be a judgment in tort "without exemption". There is no proof whatever showing that the C. Ferger whose name appears upon said schedule of the bankrupt is the Charles Ferger herein sued, or that said debt for merchandise bought in 1895 was any part of or in any way connected with said judgment for tort rendered some seven years before said debt on said schedule was so listed. There is no proof that in any way connects
82 the two debts as one and the same debt, unless it could be said that said answers to interrogatories furnish such proof, and we fail to see wherein they can be said to identify the two debts as one and the same debt. See: Louden v. Walpole, 1 Ind. 319.

Appellant next insists that the motion for new trial should be granted because the court in rendering the judgment herein rendered a judgment with benefit of exemption, and without relief, whereas the judgment upon which the suit was predicated was with relief and without exemption. The judgment in this respect was wrong, but no objections were made or exceptions taken by appellant to the form of the judgment, and no motion was made to modify the same. Appellant insists that his motion for new trial presents the question and relies upon the case of Jarbor et al. v. Brown, 39 Ind. 549, and the case of Polly v. Pogue, 38 Ind. 678. We do not think

either of the cases cited support appellant's contention. This court in the 38th App. case expressly bases its decision upon the fact that the facts found by the court made it necessary that the judgment should be rendered in that case as it was and says "The finding in such respect is contrary to law as well as contrary to the evidence and good cause arises therefrom for a new trial."

In the 39th Indiana case there were reasons shown in the opinion for reversing the judgment in that case other than that a part of the same was rendered without relief. All of the more recent authorities hold that to save a question as to the form of the judgment some objection and exception must be made and saved at the time it is rendered, or a motion made to modify or correct. Allen v. Studebaker, etc. Co. 152 Ind. 406; Tucker v. Hyatt 151 Ind. 332-338; Stalcup v. Dixon, 136 Ind. 9-19; Kelley v. Houts, 30 Ind. App. 474-477; Johnson v. Prine 55 Ind. 351; Lewis v. Edwards, 44 Ind. 333; Elliott App. Pro. secs. 345, 346.

Judgment affirmed.

83 And afterwards, to-wit: on the 7th day of May 1912, the same being the 140th Judicial Day of the November Term 1911, of said Appellate Court, the following further pleas and proceedings were had herein to-wit:

Comes now the Appellant by counsel, and files his petition and briefs (8) for a rehearing herein, in the words and figures following: (Here Insert).

And afterwards, to-wit: on the 29th day of June 1912, the same being the 30th Judicial Day of the May Term 1912, of said Appellate Court, the following further pleas and proceedings were had in said cause, to-wit:

Comes now the parties by counsel, and the Court being sufficiently advised in the premises, overrules the petition for a rehearing heretofore filed herein by Appellant, with an opinion pronounced by Hottel, Chief Judge, in the words and figures following: (Here Insert).

84 THE STATE OF INDIANA:

In the Appellate Court, Division Number One, May Term, 1912.

On the 29th Day of June 1912, Being the 30th Judicial Day of said May Term, 1912.

Hon. Milton B. Hottel, Chief Judge; Hon. David A. Myers, Hon. Edward W. Felt, Judges.

No. 7507.

#75562.

In the Case of GEORGE F. KREITLEIN
vs.
CHARLES FERGER.

Appealed from the Marion Superior Court.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

HOTTEL, *C. J.*:

Appellant's petition for rehearing overruled.

85 On a petition for rehearing it is very earnestly insisted that the original opinion herein discloses the necessity for a reversal of the case. This contention is predicated upon the statement in the opinion that the judgment below was wrong in that it was rendered with benefit of exemption and without relief, "whereas the judgment upon which the suit was predicated was with relief and without exemption." It is insisted that this court is in error in holding that such mistake in the judgment was not properly presented by the grounds of the motion for new trial that the decision was not sustained by sufficient evidence, and is contrary to law, and in holding that the attention of the court below should have been directed to the mistake by a proper objection to the judgment and exception to same, or by a motion to modify.

Counsel, in support of their position, insist that the finding in the case contained the same error as that carried into the judgment, and that therefore the error is properly raised by said ground of the motion for new trial. The case of Migatz v. Stieglitz, 166 Ind. 361, and others of similar import are relied upon.

It must be remembered that in the case at bar there is no special finding, but only a general finding for the plaintiff that he shall recover $508.50 without relief. Appellant's contention that where the finding contains the error and the judgment correctly follows the finding, that such error is presented by said grounds of the motion for new trial is correct, where there has been a finding of facts. It is

so manifest that the error, here relied upon, was the result of mistake and oversight which would have been promptly corrected by the trial court, if its attention had been directly called to the same, that the reason for the application of the general rule which requires that the attention of the trial court should be called to the particular error relied upon, before it will bé available upon appeal, seems obvious. But, in any event, the error is not one that should operate to reverse the case, but is one which this court can and should cure by a modification of the judgment below. Merom Gravel Road Company v. Pearson, 33 Ind. App. 174; Harris v. Curtis, 34 Ind. App. 438; Mcafee v. Reynolds, 130 Ind. 33; Dougherty v. Wheeler, 125 Ind. 421.

The court will allow its judgment of affirmance to stand with directions to the court below to so amend its judgment as to make it with relief from valuation and appraisement laws.

Petition for rehearing overruled.

86 And afterwards, to-wit: on the 27th day of July 1912, the same being the 54th Judicial Day of the May Term 1912, of said Appellate Court, the following further pleas and proceedings were had in said cause, to-wit:

Comes now the Appellant by counsel and files his petition herein to transfer the cause to the Supreme Court with briefs (8) on said petition, and which petition and briefs are in the words and figures following: (Here Insert).

And on the same day the following further pleas and proceedings were had in said Court in said cause:

Comes now the Appellant by counsel, and files a motion with briefs (8) thereon to tax the costs of appeal to appellee, which motion and briefs are in the words and figures following: (Here Insert).

And on the same day the following further pleas and proceedings were had in said Court in said cause:

Comes now the Appellee by counsel and acknowledges service of the motion heretofore filed herein to tax costs of this appeal to the Appellee, said acknowledgment being in the words and figures following to-wit: (Here Insert).

And afterwards, to-wit: on the 23rd day of January, 1913, the same being the 52nd Judicial Day of the November Term 1912, of said Supreme Court, the following further pleas and proceedings were had in said cause to-wit:

Come now the parties by counsel, and the Supreme Court being sufficiently advised in the premises, denies the petition to transfer heretofore filed herein by Appellants: (Here Insert).

87 And afterwards, to-wit: on the 13th day of February 1913, the same being the 70th Judicial Day of the November Term 1912 of said Appellate Court, the following further pleas and proceedings were had in said cause to-wit:

Come the parties by counsel and the Court being advised in the premises, sustains Appellant's motion heretofore filed herein to tax

costs, to the extent that costs of appeal be equally divided between Appellant and appellee, and Clerk of this Court ordered to tax costs accordingly.

88 It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed each party to pay one-half the costs of the appeal all of which is ordered to be certified to said Court,

And it is further considered by the Court, that the — recover of the — the sum of — for — costs and charges in this behalf expended.

THE STATE OF INDIANA:

Appellate Court.

I, J. Fred France, Clerk of the Supreme Court, and ex-officio Clerk of the Appellate Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Appellate Court in the above entitled cause.

In witness whereof, I hereto set my hand and affix the seal of said Appellate Court, at the City of Indianapolis, this — day of ——, 191–.

[Seal Appellate Court, State of Indiana.]

J. FRED FRANCE, *C. A. C.*

88½ And afterwards, to-wit: on the 25th day of February 1913, the same being the 80th Judicial Day of the November Term, 1912, of said Appellate Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files in the office of the Clerk of the Appellate Court, his petition for the allowance of a writ of error, and the allowance thereof, said petition and allowance thereof being hereto next below attached, and being as follows:

89 In the Appellate Court of Indiana.

No. 7507.

GEORGE F. KREITLEIN, Appellant,
vs.
CHARLES FERGER, Appellee.

Appellant's Petition for Writ of Error.

George F. Kreitlein, the appellant in the above entitled cause, hereby petitions the Appellate Court of the State of Indiana, to grant unto him a writ of error, to be issued by the Clerk of the United States Court for the District of Indiana, for the transfer of said cause by writ of error to the Supreme Court of the United

States of America, for the following reason, that is to say; Said George F. Kreitlein being injured and aggrieved by the judgment and decision of the Appellate Court of Indiana rendered in said cause, on the 8th day of March, 1912, and maintaining that said decision and judgment was the result of material error of law prejudicial to him, now prays that he be permitted to carry said cause to said Supreme Court of the United States by writ of error, in the manner provided by law, in order that said judgment of the Appellate Court of Indiana may be examined and reviewed, and errors involved therein and leading thereto, corrected, if such error there hath been; and said petitioner files herewith his assignment of errors which sets forth separately and particularly each error asserted and to be urged by him in said Supreme Court of the United States.

And said petitioner further prays that a transcript of the record and proceedings in said cause in the Appellate Court of Indiana, including the opinion of said court rendered therein, all duly authenticated, may be sent to said Supreme Court of the United
90 States, and that after such bond as this court may require has been duly approved, a citation in due form be issued and attested by the Chief Justice of this court.

And your petitioner will ever pray.

Respectfully submitted,

JOHN B. ELAM,
JAMES W. FESLER,
HARVEY J. ELAM,
Attorneys for Appellant.

90½ [Endorsed:] No. 7507. In the Appellate Court of Indiana. George F. Kreitlein, Appellant, vs. Charles Ferger, Appellee. Filed Feb. 25, 1913. J. Fred France, Clerk. Granted—Feb. 25, 1913. Ibach, C. J. Appellant's Petition for Writ of Error. Filed Feb. 25, 1913. J. Fred France, Clerk. Elam & Fesler, Indianapolis. M 807.

91 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the appellant by counsel, and files a writ of error from the Supreme Court of the United States, to the Appellate Court of Indiana, in said cause, said writ of error being hereto next below attached, and being as follows:

92 UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Appellate Court of Indiana, Greeting:

Because in the record and proceedings, as also on the rendition of the judgment of a plea which is in the said District Court, before you, between George F. Kreitlein and Charles Ferger a manifest error hath happened, to the great damage of the said George F. Kreitlein as by his complaint appears; and it being fit that the

error, of any there hath been, should be duly corrected, and full and speedy jusice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said District Court, this 25th day of February A. D. 1913.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk of the District Court of the United States
for the District of Indiana.

Copy of above writ for the defendant in error lodged in the Clerk's Office of the Appellate Court of Indiana, on the 25th day of February, 1913.

In obedience to the above writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the above entitled cause, this 14th day of April A. D. 1913.

J. FRED FRANCE,
Clerk of the Appellate Court of Indiana.

[Endorsed:] No. 7507. District Court of the United States for the District of Indiana. George F. Kreitlein, Plaintiff in Error, vs. Charles Ferger, Defendant in Error. Writ of Error to the Supreme Court of the United States. Filed Feb. 25, 1913. J. Fred France, Clerk.

93 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files his bond on appeal to the Supreme Court of the United States, in the penal sum of one thousand ($1000.00) Dollars, which bond is taken and approved, being hereto next below attached, and being as follows:

94 In the Supreme Court of the United States.

No. —.

GEORGE F. KREITLEIN, Plaintiff in Error,
vs.
CHARLES FERGER, Defendant in Error.

In Error to the Appellate Court of Indiana.

Know all men by these presents: That we, George F. Kreitlein as principal, and Meeker Bros., Thos. S. Meeker as surety, are held and firmly bound unto the above named Charles Ferger, defendant in error, in the sum of one thousand dollars, ($1,000.00), to be paid to said defendant in error, to which payment well and truly to be made we bind ourselves jointly and severally and each of our executors, administrators and assigns, jointly by these presents.

Signed and sealed with our seals, this 21st day of February, 1913.

Whereas, the above named plaintiff in error has prosecuted his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Appellate Court of the State of Indiana;

Now therefore, the condition of this obligation is that if the above named plaintiff in error shall prosecute this said writ of error to effect, and pay any judgment or costs that may be adjudged or awarded against him if he shall fail to make good his plea in writ of error, then this obligation to be void, otherwise in full force.

MEEKER BROS,
THOMAS S. MEEKER.
GEORGE F. KREITLEIN.

95 STATE OF INDIANA,
Marion County, ss:

Thomas S. Meeker being first duly sworn says, that he is a surety on the above bond, and that he is the owner of real estate in *their* own name of the value of Three Thousand Dollars over and above all liens against said real estate.

THOMAS S. MEEKER.

Subscribed and sworn to before me this 21st day of February, 1913.

[SEAL.] FANNIE McCLINTOCK,
Notary Public.

My commission expires Nov. 2, 1916.

Taken and approved by me this 25th day of February, 1913.

JOSEPH G. IBACH,
Chief Judge of the Appellate Court of Indiana.

By the Court.
J. FRED FRANCE,
Clerk Appellate Court.

[Endorsed:] Filed Feb. 25, 1913. J. Fred France, Clerk.

95a And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files his citation on said writ of error, duly signed granted and issued by the Hon. Joseph G. Ibach, being hereto next below attached, and being as follows:

And afterwards, to-wit on the 25th day of March, 1913, the same being the 104th Judicial Day of the November Term, 1912, of said Appellate Court, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Plaintiff in error and files his return to said citation, being hereto next below attached, and being as follows:

And afterwards to-wit: on the same day the following further pleas and proceedings were had in said Court in said cause:

Comes now the Plaintiff in error and files his petition for a new citation, which petition was duly granted and citation issued and signed by the Hon. Joseph G. Ibach, Chief Judge of the Appellate Court of Indiana, and being hereto next below attached, and being as follows:

95b United States of America to Charles Ferger, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington thirty days after the date hereof, pursuant to a writ of error filed in the Clerk's office of the Appellate Court of the State of Indiana, wherein George F. Kreitlein is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph G. Ibach, Chief Judge of the Appellate Court of the State of Indiana, on the 25 day of February, in the year of our Lord 1913.

JOSEPH G. IBACH,
Chief Judge of the Appellate Court of Indiana.

[Endorsed:] Filed Feb. 25, 1913. J. Fred France, Clerk.

95c STATE OF INDIANA,
Marion County, ss:

Return of Citation.

Harvey J. Elam, being first duly sworn says: That he served the attached citation on William E. Reiley on March 6th, 1913, and also served said citation on Charles W. Appleman on March 5th, 1913, and that service in each case was by reading and leaving a

copy, and that said parties served were the ones who appear as attorneys of record in the above case.

Affiant further says that when he undertook to serve Charles Ferger, the defendant in error in the above cause, he discovered for the first time that Charles Ferger died on July 11th, 1911, and that thereafter Minnie D. Ferger was appointed Administratrix of said Charles Ferger, and filed an inventory in which said judgment apeared listed among the assets; and that thereafter on November 30th, 1912, said administratrix filed her final report and was discharged, and that there is nothing in the record of the administration to show who became the owner of this judgment; that said final report shows that all debts were paid, and this affiant presumes that said judgment became the property of the heirs; that the heirs of said Charles Ferger were Minnie D. Ferger, widow, Edward Ferger, Otto D. Ferger, Gustave Ferger, Lena Ferger, Lillian Ferger, Carrie Ferger Weimann, Charles Ferger and Harry Ferger; that all of said heirs are now of age as this affiant is informed and verily believes.

This affiant further says that the judgment docket shows that Charles W. Appleman above mentioned, claims a lien on said judgment for $350.00 attorney's fees.

Wherefore. this affiant did not know any one else to serve with the citation in its present form, and served no other persons
95*d* with said citation.

HARVEY J. ELAM.

Subscribed and sworn to before me this 8th day of March, 1913.

[Notary Public Seal, Indiana.]

BESSIE ZIMMERMAN,
Notary Public.

My commission expires on the 14th day of February, 1914.

95*e* In the Appellate Court of Indiana.

No. 7507.

GEORGE F. KREITLEIN, Appellant,
vs.
CHARLES FERGER, Appellee.

Comes now the appellant in the above entitled cause, and respectfully shows to the court that when he undertook to serve the citation heretofore issued, in perfecting the appeal to the Supreme Court of the United States, it appeared that said Charles Ferger was dead, and the judgment apparently the property of his heirs.

Wherefore, the appellant asks that a further citation be issued by this court directed to whatever parties seem proper to the court, and this appellant suggests that a citation in the following form be prepared:

95*f* United States of America to the Heirs of Charles Ferger, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington thirty days after the date hereof, pursuant to a writ of error filed in the Clerk's office of the Appellate Court of the State of Indiana, wherein George F. Kreitlein is plaintiff in error, and Charles Ferger is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable —— —— of the Appellate Court of the State of Indiana, on the 25th day of March, in the year of our Lord 1913.

JOSEPH G. IBACH,
Chief Judge of the Appellate Court of Indiana.

95*g* Wherefore, the appellant prays that a new citation issue in this cause to such parties as to the court seems proper.

ELAM & FESLER,
Attorneys for Appellant.

[Endorsed:] No. 7507. Appellate Court of Indiana. George F. Kreitlein, Appellant, vs. Charles Ferger, Appellee. Motion for Citation. Elam & Fesler.

96 And on the 25th day of March, 1913, the following further pleas and proceedings were had in said court in said cause:

Comes now the Appellant by counsel, and files his citation on said writ of error, duly signed by Hon. Joseph G. Ibach, Chief Judge of the Appellate Court, and proof of service of the citation on the defendants in error, said citation and proof of service thereof being hereto next below attached and being as follows:

United States of America to the Heirs of Charles Ferger, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington thirty days after the date hereof, pursuant to a writ of erorr filed in the Clerk's office of the Appellate Court of the State of Indiana, wherein George F. Kreitlein is plaintiff in error, and Charles Ferger is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph G. Ibach of the Appellate Court of the State of Indiana, on the 25th day of March, in the year of our Lord, 1913.

JOSEPH G. IBACH,
Chief Judge of the Appellate Court of Indiana.

[Endorsed.]

Served Minnie D. Ferger by leaving a true copy of this Notice at her last and usual place of residence.

Served Edward Ferger by leaving a true copy of this Notice at his last and usual place of residence.

Served Otto D. Ferger, by leaving a true copy of this Notice at his last and usual place of residence.

Served Gustave Ferger, by leaving a true copy of this Notice at his last and usual place of residence.

Served Lillian Ferger, by leaving a true copy of this Notice at her last and usual place of residence.

Served Charles Ferger, Harry Ferger, Lena Ferger and Carrie Ferger Weimann, by reading to each one of the above named parties and within their hearing and by leaving true copies of this Notice with each of them. Service on all of the above named parties this 7 day of April, 1913.

Costs, $6.00.

JOHN C. PETERS, *Constable.*

Subscribed and sworn to before me this 14th day of April, 1913.

[Notary Public Seal, Indiana.]

HARVEY J. ELAM,
Notary Public.

Commission expires Aug. 13, 1916.

[Endorsed:] Filed Apr. 15, 1913. J. Fred France, Clerk.

97 And on the 25 day of February, 1913, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counesl, and files an Assignment of Errors in the Supreme Court of the United States, on the writ of error herein, said assignment of errors being hereto next below attached, and being as follows:

98 In the Supreme Court of the United States.

No. —.

GEORGE F. KREITLEIN, Plaintiff in Error,
vs.
CHARLES FERGER, Defendant in Error.

In the Matter of the Writ of Error of GEORGE F. KREITLEIN, Plaintiff in Error, to the Appellate Court of Indiana.

Assignment of Errors.

George F. Kreitlein, as plaintiff in error, in the above entitled cause, for his assignment of errors in the Supreme Court of the United States says:

That in the record and proceedings in the above entitled cause, there is manifest error harmful to said plaintiff in error, in each of the following several particulars, that is to say:

1. The Appellate Court of Indiana erred in adjudging and affirming that the discharge in bankruptcy of George F. Kreitlein proved in this cause, did not constitute a valid defense to the amount demanded.

2. The Appellate Court of Indiana erred in affirming the judgment rendered in the Supreme Court of Marion County, Indiana.

3. The Appellate Court of Indiana erred in holding that the use of initials in the schedule filed by the bankrupt, in naming his creditors, was not a sufficient name to comply with the requirements of the bankruptcy act.

4. The Appellate Court of Indiana erred in holding that the naming of the defendant in error in the bankruptcy schedule
99 by the name of "C. Ferger", was not a sufficient scheduling of his name to comply with the bankruptcy act and bar the debt when the discharge in bankruptcy was issued.

5. The Appellate Court of Indiana erred in holding that it was necessary for the plaintiff in error, in making up his schedule of creditors, to give the address of each creditor.

6. The Appellate Court of Indiana erred in holding that it was not sufficient for the plaintiff in error, in making up his bankruptcy schedule, to state the address of the defendant in error, as "Indianapolis".

7. The Appellate Court of Indiana erred in holding that the burden was on the plaintiff in error to prove by evidence outside the schedule in bankruptcy, that the debt shown in the schedule was the same debt as the one upon which suit was brought.

8. The Appellate Court of Indiana erred in holding that the schedule filed by the plaintiff in error did not sufficiently show on its face that the debt scheduled was the debt upon which suit was brought by the defendant in error.

Wherefore, George F. Kreitlein, plaintiff in error as aforesaid, prays that the judgment of the Appellate Court of Indiana rendered in this cause be in all things reversed, and that the Appellate Court of Indiana be ordered to enter a judgment reversing the judgment of the Superior Court of Marion County, from which this plaintiff in error prosecuted his appeal in this cause to the Appellate Court of Indiana.

JOHN B. ELAM,
JAMES W. FESLER,
HARVEY J. ELAM,
Attorneys for Plaintiff in Error.

[Endorsed:] No. —. In the Supreme Court of the United States. George F. Kreitlein, Plaintiff in Error, vs. Charles Ferger, Defendant in Error. In the Matter of the Writ of Error of George F. Kreitlein, Plaintiff in Error, to the Appellate Court of Indiana. Assignment of Errors. Filed Feb. 25, 1913. J. Fred France, Clerk. Filed Feb. 18, 1913. J. Fred France, Clerk. Elam & Fesler, Indianapolis.

100 STATE OF INDIANA:

In the Appellate Court.

I, J. Fred France, Clerk of the Supreme Court and Ex Officio Clerk of the Appellate Court, of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Appellate Court of Indiana, in the above entitled cause No. 7505, appealed from the Marion Superior Court (75562), also the original petition for the allowance of the writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citations to the defendant in error and proof of service thereof; a copy of the original bond and its approval by the Chief Judge of said Appellate Court, and the assignment of errors in the Supreme Court of the United States.

Which said transcript, annexed hereto, together with said original petition for the allowance of a writ of error, said original writ of error, original citations, copy of the original bond, and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In witness whereof, I hereto set my hand and affix the seal of said Appellate Court, at the City of Indianapolis, Indiana, this 14th day of April 1913.

[Seal Appellate Court, State of Indiana.]

J. FRED FRANCE,
Clerk Appellate Court of Indiana.

Endorsed on cover: File No. 23,655. Indiana Appellate Court. Term No. 157. George F. Kreitlein, plaintiff in error, vs. Charles Ferger. Filed April 24th, 1913. File No. 23,655.

6

IN THE

Supreme Court of the United States

IN ERROR TO THE APPELLATE COURT OF INDIANA.

OCTOBER TERM, 1914.

No. 157

GEORGE F. KREITLEIN,

Plaintiff-in-Error,

v.

CHARLES FERGER,

Defendant-in-Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN B. ELAM,
JAMES W. FESLER,
HARVEY J. ELAM,
Attorneys for Plaintiff in Error.

Central City Publishing Co., Printers, Indianapolis.

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IN THE

Supreme Court of the United States

IN ERROR TO THE APPELLATE COURT OF INDIANA.

OCTOBER TERM, 1914.

GEORGE F. KREITLEIN,
Plaintiff-in-Error
v.
CHARLES FERGER,
Defendant-in-Error.

No. 157.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

Charles Ferger filed suit against George F. Kreitlein in the Superior Court of Marion County, Indiana. The complaint alleged, in substance, that on the 23rd of November, 1897, the plaintiff had recovered a judgment for $300.00 against the defendant, and the present suit was brought on that judgment. The defendant filed answers setting up a discharge in bankruptcy, and claimed that said discharge was a defense to this action. The plaintiff filed a reply of general denial to the answers of the

defendant. The case was tried by the court and judgment rendered for the plaintiff in the sum of $508.50. The evidence introduced by the plaintiff was the judgment in the former case in the sum of $300.00, and the plaintiff himself testified that he owned the judgment and that it had never been paid, and that he did not know that Mr. Kreitlein went through bankruptcy until lately and did not get any notice of it. The defendant introduced in evidence the verdict of the jury in the former case, including the answers made by the jury to certain interrogatories. These interrogatories established that Kreitlein was insolvent in November, 1895, and at that time ordered from the plaintiff the flour described in plaintiff's complaint. It was further found that Kreitlein did not make any representations to the plaintiff or to the public in general, as to his solvency, and did not make any false representations on that subject, and that the plaintiff in filling the defendant's order for flour did not rely upon any statements or representations made by the defendant to himself or to the public in general, but that the plaintiff thought the sale of flour from himself to the defendant was a sale for cash, and afterwards sent various people to collect, and that the defendant agreed to pay.

The defendant also introduced in evidence his original petition and schedules filed therewith in his bankruptcy proceeding on November 11th, 1905. In the schedule was a statement of all creditors whose claims were unsecured, and in that statement there appeared under the heading "Names," "C. Ferger;" under the heading "Residence," "Indianapolis;" under the heading "Place and Date," "Indianapolis, 1895;" under the heading "Nature," "Merchandise;" under the heading "Amount," "$271.85."

The defendant also introduced his discharge in bankruptcy, material parts of which read as follows:

"Whereas, George F. Kreitlein in said district has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have conformed to all requirements of law in that behalf, it is therefore ordered by this court that said George F. Kreitlein be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 11th day of November, A. D., 1905, on which day the petition for adjudication was filed by him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy."

This was, substantially, all the evidence introduced in the case and the court found against the defendant as above stated. The defendant appealed to the Appellate Court and claimed that the defendant had introduced sufficient evidence to show that the debt sued upon was discharged on account of the discharge in bankruptcy. The Appellate Court decided against the defendant Kreitlein on appeal, on the ground that the defendant in addition to proving his discharge in bankruptcy, was bound to prove that the debt shown in the schedule is the debt sued upon, and also on the further ground that the schedules which were introduced show that the debt was not, in fact, properly scheduled, it being the contention that the name and address given for the plaintiff was insufficient. The appellant thereafter asked the Supreme Court of Indiana to transfer the cause, but that court refused to order the transfer, so, the decision by the Appellate Court stands as a decision of the highest court in the state to which appeal can be taken. Your plaintiff in error then filed its writ of error in the Supreme Court of the United States and now contends that under the evidence introduced, it

was the duty of the trial court to find for the defendant and of the Appellate Court to order such action and that your plaintiff in error has been denied his rights under the federal bankruptcy law. It is the contention of your plaintiff in error that under a correct interpretation of the United States bankruptcy statute, it should be held that the debt involved in this case is barred by his discharge in bankruptcy, and that the Indiana courts should have so found.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns and relies upon each of the following errors:

That in the record and proceedings in the above entitled cause, there is manifest error harmful to said plaintiff in error, in each of the following several particulars, that is to say:

1. The Appellate Court of Indiana erred in adjudging and affirming that the discharge in bankruptcy of George F. Kreitlein proved in this cause, did not constitute a valid defense to the amount demanded.

2. The Appellate Court of Indiana erred in affirming the judgment rendered in the Superior Court of Marion County, Indian.

3. The Appellate Court of Indiana erred in holding that the use of initials in the schedule filed by the bankrupt, in naming his creditors, was not a sufficient name to comply with the requirements of the bankruptcy act.

4. The Appellate Court of Indiana erred in holding that the naming of the defendant in error in the bankruptcy schedule by the name of "C. Ferger," was not a

sufficient scheduling of his name to comply with the bankruptcy act and bar the debt when the discharge in bankruptcy was issued.

5. The Appellate Court of Indiana erred in holding that it was necessary for the plaintiff in error, in making up his schedule of creditors, to give the address of each creditor.

6. The Appellate Court of Indiana erred in holding that it was not sufficient for the plaintiff in error, in making up his bankruptcy schedule, to state the address of the defendant in error, as "Indianapolis."

7. The Appellate Court of Indiana erred in holding that the burden was on the plaintiff in error to prove by evidence outside the schedule in bankruptcy, that the debt shown in the schedule was the same debt as the one upon which suit was brought.

8. The Appellate Court of Indiana erred in holding that the schedule filed by the plaintiff in error did not sufficiently show on its face that the debt scheduled was the debt upon which suit was brought by the defendant in error.

WHEREFORE, George F. Kreitlein, plaintiff in error as aforesaid, prays that the judgment of the Appellate Court of Indiana, rendered in this cause, be in all things reversed, and that the Appellate Court of Indiana be ordered to enter a judgment reversing the judgment of the Superior Court of Marion County, from which this plaintiff in error prosecuted his appeal in this cause to the Appellate Court of Indiana.

BRIEF OF ARGUMENT.

The Appellate Court denied the plaintiff in error his rights under the federal bankruptcy law, and should have ordered a new trial on the ground that the evidence introduced by the defendant made a perfect defense to the action and that the evidence was not sufficient to support the finding and that the finding was contrary to law, because,

A. The evidence of the discharge in bankruptcy proved a complete defense to the debt proved by the plaintiff without any further evidence because,

1. Under the Indiana rules of practice, where the evidence is in the record and there is no contradiction in it, the Appellate Court will weigh it even in the interest of the appellant and in its discussion in this case the Appellate Court seems to accept this rule.

First National, etc. v. Farmers, etc., 171 Ind. 323;

Riley v. Boyer, 76 Ind. 152.

2. A certified copy of an order granting a discharge should be evidence of the jurisdiction of the court, the regularity of the proceedings and of the fact that the order was made.

Bankruptcy Act, Section 21f;

Hays v. Ford, 55 Ind. 52;

Begein v. Brehm, 123 Ind. 160;

Hancock National, etc. v. Farnum, 176 U. S. 640, 645.

3. The debt established by the plaintiff in this case was a provable debt.

Bankruptcy Act, Section 63, a (1).

4. A discharge in bankruptcy releases the debtor from all provable debts when there is no evidence before the court that the debt belongs to any of the excepted classes.

Bankruptcy Act, Section 17.

5. If the plaintiff claimed his debt was within any of the exceptions to Section 17, the burden was on him to prove it.

Goddin v. Neal, 99 Ind. 334;

Thompkins v. Williams, 137 App. Div. 521; affirmed in 206 N. Y. 744;

Anthony v. Sturdevant, 56 Southern 571 (Ala.);

Hallagan v. Dowell, 139 N. W. Rep. 883 (Iowa);

B. F. Roden Grocery Co. v. Teasley, 53 So. Rep. 815 (Ala.);

Alling v. Stratka, 118 Ill. App. 184;

Lafoon v. Kerner, 138 N. C. 281; 50 S. E. Rep. 654;

Van Norman v. Young, 228 Ill. 425, 430; 81 N. E. 1060;

Bailey v. Gleason, 76 Vt. 115; 56 Atl. 537;

New York, etc. v. Crockett, 102 N. Y. Supp. 412;

In re Peterson's Estate, 118 N. Y. Supp. 1077;

Gatliff v. Mackey, 104 S. W. Rep. 379 (Ky.);

1 Stephen on Pleading, page 120;

Works' Indiana Practice and Pleading, Section 365;

Sherwood v. Mitchell, 4 Denio 435 (N. Y.);

Imhoff v. Whittle, 81 S. W. 814 (Tex.).

6. The following cases cited by the defendant in error to establish that the burden of proof is on the defendant to show that the debt is properly scheduled, are not persuasive authority:

Sorden v. Gatewood, 1 Ind. 107;

Imhoff v. Whittle, 82 S. W. 1056 (Tex.).

7. The fact that the creditor did not have actual knowledge of the bankruptcy does not keep the discharge from being effective.

Wiley v. Pavey, 61 Ind. 457;

Bankruptcy Act, Sections 17 and 58;

Beck v. Crum, 127 Ga. 94.

B. The evidence introduced by the defendant in addition to the discharge in bankruptcy was sufficient in the absence of contradiction to prove that the plaintiff's debt was not within any of the class of debts excepted from the operation of the discharge, because,

1. The answers to interrogatories show that the original judgment was for money due on the purchase of flour and hence was clearly not within the first, second or fourth exception stated in Section 17, which sections serve to exempt certain kinds of debts from the effect of the discharge.

2. The mere fact that the original judgment was given without exemption does not show that it is within any of the excepted classes.

Crawford v. Burke, 195 U. S. 176.

3. The evidence, so far as introduced, showed that the plaintiff's debt was properly scheduled, because the description of the debt given in the schedule, so far as it goes, is a description of the plaintiff's debt.

Matteson v. Dewar, 146 Ill. App. 523;

4. The evidence, so far as introduced, showed that the debt was properly scheduled as to name.

Bridges v. Layman, 31 Ind. 384;
Matteson v. Dewar, 146 Ill. App. 523;
Finnell v. Armoura, 117 Pac. Rep. 49;
Gatliff v. Mackey, 104 S. W. Rep. 379; 31 Ky. L. R. 947;
Longfield v. Minnesota, etc., 103 N. W. 706.

5. The following cases relied upon by the Indiana court to the effect that an initial is not a name are cases which are founded on an Indiana statute dealing with the subject of pleading and hence, are not in point here and have no application in construing the federal statute which can not be affected by any Indiana statute.

Bascom v. Turner, 5 Ind. App. 229;
Schearer v. Peale & Co., 9 Ind. App. 282-286;
1 Burns' R. S. 1914, Section 343.

6. The case of *Louden v. Walpole,* 1 Ind. 319, simply deals with the question of what proof is necessary that a note introduced in evidence was signed by the plaintiff and is not in point here.

7. The debt was duly scheduled with the residence of the creditor and it was not necessary to give any street address.

Miller v. Guasti, 226 U. S. 170;
Guasti v. Miller, 203 N. Y. 259;
Finnell v. Armoura, 117 Pac. Rep. 49;
North Commercial Co. v. Hartke, 110 Minn. 338;
Gatliff v. Mackey, 104 S. W. Rep. 379; 31 Ky. L. R. 947.

ARGUMENT.

It is the contention of the plaintiff in error that he has been deprived of his rights under the federal bankruptcy statute, by the decision of the Appellate Court of Indiana in this case, and that that court should have held that the evidence introduced at the trial was such that judgment should have been entered for the defendant and should have instructed that the trial court grant a new trial.

It is the contention of the plaintiff in error that if he had simply introduced a certified copy of his discharge in bankruptcy and done nothing further, it would have been the duty of the trial court, under the federal bankruptcy act, to have entered judgment for the defendant, and, since the trial court did not do so, it was the duty of the Appellate Court to grant a new trial, and to hold that the evidence introduced was sufficient to prove a complete defense.

It is the law in Indiana that where the evidence is in the record and there is no contradiction in it, and the only question is to determine the result of applying the law to the facts established, the Appellate Court will review the action of the trial court applying that law. This principle is well established in Indiana procedure and the Appellate Court in its decision in this case accepted this rule of law and did undertake to pass upon the effect of the evidence introduced, and in doing so, failed to correctly apply the law.

It is provided in Section 21 F of the federal bankruptcy act that—

"A certified copy of an order confirming or setting aside a composition or granting or setting aside a discharge not revoked, shall be evidence of the jurisdiction of the court,

the regularity of the proceedings and of the fact that the order was made."

It is further held in the case of *Hancock, etc. v. Farnum,* 176 U. S. 640, at page 645, that a certified copy of a judicial proceeding in the United States court is not only evidence, but is conclusive evidence on the subject covered, which can not be disregarded in a state court.

In the case of *Begein v. Brehm,* 123 Ind. 160, it is held that such an order is not open to collateral attack. From these decisions it would follow that the evidence established beyond question that the defendant was given the discharge in bankruptcy which he claims, and that the court was bound to accept this discharge as a fact and then apply the law in view of that fact. It is provided in the bankruptcy act in Section 63 that—

"Debts of a bankrupt may be proved and allowed against his estate which are (1) a fixed liability as evidenced by a judgment or an instrument in writing, absolutely owing."

The judgment proved by the plaintiff was, therefore, a provable debt in the bankruptcy proceeding. Section 17 of the bankruptcy act reads as follows:

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the state, county, district or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representation, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child or for seduction of an unmarried female, or for criminal conversion; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropria-

tion or defalcation while acting as an officer or in any fiduciary capacity."

Under this section it is provided generally, that all provable debts are discharged by a discharge in bankruptcy. To this general rule as laid down, there are certain exceptions and one question with which we have to deal in this case is the question of burden of proof on the issues of whether the debt in question is within one of the exceptions specified. It is the contention of the plaintiff in error that the burden of proof was on the plaintiff at the trial to prove that his debt was within one of the exceptions if he sought to claim any advantage under any of these exceptions. The Appellate Court in passing on the case, took the view that the case could be disposed of on other grounds, without discussing the question of burden of proof, and, hence, expressly reserved its decision on that subject; and yet, in the course of the argument the Appellate Court indulged in arguments which were necessarily based on an assumption that the burden was on the defendant instead of the plaintiff.

For instance, one ground of the decision in the Appellate Court is that there is no sufficient evidence that the debt shown in the schedule is the same as the debt sued upon in this case. The Appellate Court seems to have overlooked the fact that the question of whether the debt is scheduled or not, only becomes important in considering whether the debt in question is within the third exception to Section 17, which third exception excludes debts which have not been duly scheduled. Section 17 in its opening clause simply says that all provable debts are barred, without making any reference to the question of whether the debt is scheduled or not. If, therefore, the plaintiff is to de-

rive any benefit from the contention that it is not shown that the debt is sufficiently scheduled, it is because the plaintiff is seeking to establish that his debt is within the third exception.

In taking the ground which it did, the Appellate Court, therefore, seems to be in the position of saying that they will not say where the burden of proof was as to the exceptions to Section 17, but will hold that the defendant failed to prove his defense because he did not introduce evidence that the debt was not within the third exception. In other words, the Appellate Court does not seem to have reached its decison in any clear or logical manner, but really decided a question it claimed to leave undecided. So far as we can discover, all other courts have held that the burden of proof was on a given party as to all of the exceptions to Section 17. No court, until this decision was rendered, has suggested that the burden of proof might be on one party as to certain exceptions, and on the other party as to other erceptions, and we can not discover any reason in the nature of things, why there should be any such distinction.

The burden of proof should be held as to all the exceptions and as to every feature of each exception, to be on one party or the other, and there is no reason in logic or in the wording of the statute, for making the rule different as to different features of the exceptions or as to different exceptions. So far as we can discover, the authorities are becoming practically unanimous to the effect that the burden is on the plaintiff to prove that his debt is within one of the exceptions, if he wishes to derive any benefit from such exceptions.

The case of *Goddin v. Neal,* 99 Ind. 334, is one in which

there was a suit on a judgment. There was a plea of a discharge in bankruptcy and a reply by the plaintiff that the judgment was upon a debt of trust that could not be discharged by the bankruptcy law. The Supreme Court of Indiana, in passing upon the evidence, reached the conclusion that there was no evidence that the debt was a debt of trust and that a finding for the defendant was proper. In that case the evidence was in such shape that it was not possible to tell upon which of two paragraphs of complaint the original judgment was rendered, and the court held that under such circumstances there was an absence of evidence to show that it was a liability for a trust fund, and found against the plaintiff. The case is apparently treated as one of absence of evidence. The question of burden of proof was not expressly discussed, but the reasoning necessarily involves that question, and the conclusion which is apparently based on the theory that there was no evidence as to what the original debt was, is in effect a holding that the burden was on the plaintiff to produce such evidence and in the absence of such evidence the finding should be against the plaintiff.

We know of no case in Indiana later than this, discussing the question. This question, however, has been discussed in a large number of other states and passed upon expressly. In the state of New York there were numerous decisions by inferior courts that the burden was on the plaintiff to prove that his debt was within an exception after a discharge was pleaded, and finally the same conclusion was reached in the case of *Thompkins v. Williams,* 206 N. Y. 744, by the highest court in the state. The decision last cited is simply a memorandum affirming the decision in the same case in 137 App. Div. 521, in which

the facts are stated and the reasoning of the court given. It appears that the plaintiff in that case was trying to enforce a personal injury claim growing out of the fact that her husband had been given chloral by a barkeeper when in a state of intoxication. A majority of the court took the view that there was no evidence that the drug was administered with any intent to injure the husband, and that the claim was nothing more than a claim for negligence which would be barred by the bankruptcy discharge, and in the course of the discussion the court expressly stated that the burden was on the plaintiff to prove that her claim was within some of the excepted classes, if she was to avoid the effect of the discharge in bankruptcy.

In the case of *Anthony v. Sturdivant*, 56 Southern, 571, the highest court of Alabama reached the same conclusion. In that case the question arose in determining the competency of a witness who was incompetent if the discharge did not apply to a certain debt, but was competent if the discharge did cover the debt. Those offering the witness simply proved the discharge in bankruptcy, and it was held that the presumption was that it covered the debt and if those who were contending otherwise wished to exclude the witness, the burden was on them to show that the discharge did not apply.

The same court, in the case of *B. F. Roden Grocery Co. v Lessley*, 53 Southern, 815, again had the question before it, but in a different form. In that case it was held that an answer pleading a discharge in bankruptcy need not aver that the debt was not within any of the excepted classes but that the burden was on the plaintiff to reply that fact if he sought to avoid the discharge in bankruptcy.

In the case of *Hallogan v. Dowell*, 139 N. W. 883, the

question was presented to the highest court of Iowa. In that case there was a suit on a judgment and a defense based on a discharge in bankruptcy, and it was held that the burden was on the plaintiff to prove that the debt was in a class not dischargeable in bankruptcy. In the state of Illinois the matter has been presented in two or three cases. In the case of *Van Norman v. Young,* 228 Ill. 425, the question was presented to the highest court of Illinois by an instruction given by the lower court, to the effect that the burden was on the plaintiff to show that their debt from the defendant was not barred by his discharge in bankruptcy. The court, in passing on the point, used the following language:

"We think, however, the general rule is that a discharge in bankruptcy is presumed to cover all the debts of the bankrupt and that the introduction in evidence by the bankrupt when sued, of a certified copy of the order of discharge or other proof of his discharge in bankruptcy, is *prima facie* a bar to the claim sued on, and that the burden of proof is upon the plaintiff to show that the claim sued on is not within the terms of the bankrupt's discharge."

Several authorities are cited in support of this conclusion. In the case of *Alling v. Stratka,* 118 Ill. App. 184, the same question was before the Illinois Appellate Court, and it was held that the defendant by proving his discharge, makes a *prima facie* case and that he need not prove whether the debt was scheduled or not, and that if the plaintiff wishes to rely on that, the burden is on him to prove it.

In the case of *Lafoon v. Kerner,* 138 N. C. 281, the highest court of North Carolina held that the burden of proof was on the plaintiff to show that the debt was not sched-

uled, and that the one relying on the discharge in bankruptcy need offer no proof on that subject. The same conclusion in announced in the case of *Bailey v. Gleason,* 76 Vt. 115, and also in the case of *Galliff v. Mackey,* 104 S. W. Rep. 379, by the court of Kentucky.

It thus appears that New York, Alabama, Iowa, Illinois, North Carolina, Vermont and Kentucky have all definitely stated the law to be with reference to the burden of proof, that the burden is on the plaintiff to prove that his debt is not covered by the discharge in bankruptcy.

The only cases which have been cited in the course of the discussion of this case holding a contrary view, which seem worth discussing are two. The first is the case of *Sorden v. Gatewood,* 1 Ind. 107. That is a case in which it was held that an answer pleading a discharge in bankruptcy obtained under the act of 1841 was not sufficient, for the reason that it failed to allege that the debt in question was not within any of the exceptions named in the bankruptcy act. That case, so far as we can discover, has never been overruled in this state except that the later case of *Goddin v. Neal,* 99 Ind. 334, above discussed, adopts a different view of the law. The case has also been cited in the course of the discussion in a number of other causes in this state, but only to distinguish it, and, so far as we know, the case has never been expressly approved. It is to be noted that the question arose in that case on the pleadings and no question was involved as to sufficiency of evidence. The case was decided before the present code procedure was adopted in Indiana, and at a time when common law pleading was in force. In the case of *Sherwood v. Mitchell,* 4 Denio, 435 (N. Y.), a distinction is drawn which would mean that the case of *Sorden v. Gate-*

wood is not authority on the question of evidence. In the New York case last mentioned, the question of the burden of proof on the subject of whether a debt was within the exceptions to the discharge in bankruptcy, arose as a question of evidence. In that case the court took the view that although it was the holding in New York that a defendant must plead that the debt was not within any of the exceptions, that the defendant was not bound to prove it. It was stated that the general rule is that the burden is on the party to prove whatever he is required to plead, but that as to a discharge in bankruptcy there is an exception to the general rule, and that the defendant is required to plead that his debt is not within any of the exceptions, but that the burden is on the plaintiff to introduce evidence that the debt is within the exception. This exception to the general rule seems to have been generally recognized, and the case of *Sherwood v. Mitchell* is cited with approval in the following cases:

In re Peterson's Estate, 118 N.Y. Supp. 1077;
Lafoon v. Kerner, 138 N. C. 281;
Van Norman v. Young, 228 Ill. 425.

It would seem, therefore, that if the case of *Sherwood v. Mitchell* was a correct statement of the common law rule on this subject, that the case of *Sorden v. Gatewood* is not an authority in such a case as is now before the court, where the question arises on the evidence and not as a matter of pleading.

It should be noted further that the case of *Sorden v. Gatewood* is a case decided with reference to a former act which was worded materially different from the present act. It appears that that statute provides in Section 1 that all persons owing debts which have not been created

in certain ways are entitled to a discharge in bankruptcy. The debts as to which a discharge is not good are not inserted by way of an exception to the general rule, as they are in the present bankruptcy act, but as part of the description of debts that are barred. No decision under the former act would be closely in point with reference to the present act on account of the difference in the wording of the two statutes. The only case, so far as we can discover, which has been cited on the other side of this discussion, which was decided with reference to the present statute, is the case of *Imhoff v. Whittle*, 82 S. W. 1056 (Tex.). That case, however, is not very persuasive authority, for the reason that it was decided the other way first by the same court. In the case of *Imhoff v. Whittle*, 81 S. W. 814 (Tex.), it was held that the burden of proof as to the exceptions to Section 17 is on the plaintiff, just as in the long line of cases cited to the same effect in our present brief. For some reason, the Texas court took its former opinion back, and announced an opposite conclusion. The result is, that the Texas court has taken contradictory positions at different times, and, consequently, can not be regarded as strong persuasive authority for either side.

As a matter of reason, we believe it clear that the view adopted with reference to the present act by the majority of states is logically the correct one, for a number of reasons. It is the general rule of pleading, as announced in a number of those decisions, that where an act declares a general rule to which an exception is made, that one who wishes to derive a benefit from the exception must prove facts that bring him within the exception. It is also a general rule that the burden of proving the non-existence of a fact should not be placed upon one party where the

existence of such fact could be proved by the other side. Applying these general rules to the present statute, there is no reason for requiring a defendant to go to the trouble of proving that the debt in question is not a claim for taxes or a claim for alimony or any other of the numerous kinds of debts which are excepted from his discharge.

It makes a much clearer issue and much shorter proof, if the plaintiff is required to state his reason for saying that a debt is not barred, and point out the exception upon which he is relying, without forcing the defendant to introduce proof as to other exceptions under which the plaintiff does not expect to claim anything. In other words, it appears that in this case the plaintiff's only contention is that the debt was not sufficiently scheduled to be affected by the discharge. No other matter is in issue, yet if the burden of proof is on the defendant, the defendant must introduce evidence contradicting each one of the numerous exceptions to the statute, which evidence would serve no purpose beyond needlessly lengthening the record.

There is another, perhaps more important, consideration. The plaintiff who has a debt, in obtaining his judgment is free to shape his pleadings as he wishes. He may file two or three paragraphs of complaint on different theories, one of which would make the debt one that should be within an exception to the effect of a discharge in bankruptcy, and another additional paragraph of complaint might make the debt within the discharge in bankruptcy. Under such circumstances the defendant is powerless to prove what is the true foundation of the judgment against him. The plaintiff, on the other hand, if he wants to avoid such a dilemma, can confine his case to some theory that will bring it within one of the exceptions to Section 17. The

plaintiff is free to select the theory upon which his case is to be brought, and it is no great hardship in case he later wishes to enforce the judgment obtained, to require him to prove what that theory was.

Moreover, it unfortunately often happens that a plaintiff obtains a judgment to which he is not entitled on any theory. If a trial court enters an erroneous judgment not based on any theory, it should be within the effect of a bankruptcy discharge. If the burden is on the defendant as to the exceptions to Section 17, he could not prove whether the debt was within any of the exceptions or not, where the judgment was erroneously entered and was really without any foundation. There is no hardship, on the other hand, in requiring one who is claiming that a judgment he has should be enforced, to exhibit to the court the foundation for that judgment and show whether it is within one of the exceptions or not. We think it not unlikely that the judgment involved in this case is of the kind last discussed. The pleadings in the original judgment were not introduced in evidence by either side, and we think it may be assumed, for the purpose of argument, at least, that the original pleadings have been lost, so that the charge contained in the complaint can not now be proved. The answers to interrogatories, however, and the fact that the judgment was entered without exemption, do indicate that the original complaint in at least one paragraph, contained charges that the flour in question was fraudulently obtained by misrepresentations as to credit. Such a complaint would be a suit in tort upon which a judgment without exemption could be obtained.

The answers to interrogatories, however, indicate that no fraud was proved, and that plaintiff was given judg-

ment as on a simple sale of flour, which judgment could not without error have been entered without exemption, upon a complaint proceeding in tort. If these assumptions are correct, it is impossible for the defendant to prove what the foundation of the present judgment is, because it, in fact, has no foundation and is an erroneous judgment. If the burden of proof as to the exceptions under Section 17 is on the defendant, plaintiff who has a judgment to which he is not entitled, is in better position than one who has a legitimate and proper judgment, for the reason that if the original judgment was erroneous, the defendant can never prove whether it was within one of the exceptions or not, because he can not show what its foundation was.

It seems much more fair to place the burden upon the plaintiff, of proving what his original judgment was. He was the one who was able to frame his demand in such form as he chose, and to elect his remedy, and to make his suit tort or contract as he saw fit, and if he failed to put the record in an intelligible shape, there is no injustice in requiring him to bear the consequences. It would seem, therefore, that the established rules of pleading and practice are in accord with the weight of the decisions above discussed, and with principles looking to simple procedure at trials. A clear-cut issue and fair dealing between the parties require that the result announced by the majority of states as above pointed out, should be followed, and it should be held that the defendant who pleads a discharge in bankruptcy is not required to do anything further, and is not required to prove that the debt in question is not within any of the exceptions.

The burden of proving that the debt is within one of the exceptions to Section 17 should be on the plaintiff. In

the case now before the court the plaintiff did nothing to sustain this burden. He did introduce some evidence to the effect that he had no actual knowledge of the bankruptcy proceedings, for a long time after they were started. Such evidence is not sufficient to prove the debt sued upon, within any of the exceptions. The third exception to Section 17 excepts debts which have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless the creditor had actual knowledge of the proceedings in bankruptcy. The fact that he had no knowledge of the proceedings in bankruptcy does not alone keep the debt from being barred. This is the plain wording of Section 17. It seems to be contemplated by the bankruptcy act in Section 58, that where a debt is duly scheduled, it is the duty of the referee to mail notices to the various creditors, and if the referee fails to do that duty, the discharge in bankruptcy will be valid anyhow. If the bankrupt has done his full duty he is entitled to his discharge whether the referee does his full duty or not. This construction of the law has been adopted in the case of *Beck v. Crum*, 127 Ga. 94, in which it is held that a debt may be discharged whether the creditor had actual knowledge of the bankruptcy proceedings or not.

The case of *Wiley v. Pavey*, 61 Ind. 457, holds that such a provision in the bankruptcy statute is constitutional, and that the notices mailed by the referee are sufficient notice to support the final discharge, whether the creditor obtains any actual knowledge of the bankruptcy proceeding or not.

From the discussion so far, it therefore follows that after the defendant introduced his discharge in bank-

ruptcy he was entitled to judgment in his favor unless there was evidence that the debt sued upon was within one of the exceptions to Section 17. It is very clear from the discussion so far that the plaintiff introduced no evidence that would bring his debt within any of the exceptions, and did nothing to support the burden of proof placed upon him by the law.

It only remains to determine whether any of the subsequent evidence introduced by the defendant served to supply the deficiencies in the plaintiff's evidence. It is the defendant's contention that the additional evidence introduced, was sufficient in the absence of contradiction, to show that the debt in question was not within any of the exceptions. The answers to interrogatories introduced by the defendant indicate that the original judgment was for money due on the purchase of flour. If this was the foundation of the judgment it is clearly not within the first, second or fourth exception to Section 17, which sections exempt certain peculiar kinds of debts, and we understand there is no contention that the debt here is within any of those exceptions. The fourth exception dealing with the subject of fraud has been construed in the case of *Crawford v. Burke*, 195 U. S. 176, in such a way as to indicate that even if the judgment here is to be considered as a judgment for fraudulently obtaining flour in the open market, it would still not be within the fourth exception.

The real question involved here is the question of whether the debt was sufficiently scheduled. The first question that arises is the question of whether the debt sued upon was scheduled at all in any form. It is held in the case of *Matteson v. Dewar*, 146 Ill. App. 523, that

great precision in scheduling the debt and describing it is not required. In that case the debt was in fact in the form of a note. It was scheduled as an open account and such schedule was held sufficient. In the present case the debt sued upon is a debt of Charles Ferger. It was scheduled as a debt of C. Ferger, so that so far as the names go, there is nothing to indicate that the debt scheduled is not the debt here sued upon. Under the heading "Residence" the creditor's residence is given as Indianapolis. The suit here brought was brought in Indianapolis, and so far as there is anything to indicate the fact, C. Ferger did live in Indianapolis at the time the schedule was filed. Under the heading "Place and Date" we find "Indianapolis, 1895." The judgment sued upon was obtained in 1897, but there is nothing in the plaintiff's evidence or in any of the evidence, to indicate that the orginal debt was not contracted in Indianapolis in 1895. Under the heading "Nature" we find the word "Merchandise." So far as there is anything to indicate what the debt sued upon was, it was a debt for merchandise, namely, flour. Under the heading "Amount" we find "$271.85," which would be the amount that we would expect if the bankrupt was undertaking to schedule the debt which at the time the plaintiff's judgment was obtained, amounted to $300.00. The interest for the time which elapsed between the time the debt was contracted and the date of the judgment, would be just about enough to cover this discrepancy in amount.

It would seem therefore, that the circumstantial evidence is all to the effect that the debt scheduled is the debt here sued upon. This evidence is uncontradicted, and standing alone, is we believe, sufficient to show that the

debt sued upon was scheduled. The Appellate Court of Indiana seems to have taken the view that the bankrupt should have introduced some additional testimony to identify the two claims. It is respectfully submitted that the bankrupt was under no such duty. On the question of whether a given debt is scheduled or not, the schedule itself is the best evidence, and we believe it to be wholly immaterial whether the bankrupt intended a certain debt named in his schedule to be the debt sued upon or not. The question is not, "What did the bankrupt intend," but is rather, "Did the bankrupt put enough in his schedule to comply with the bankruptcy act." The schedule shows on its face whether the debt was scheduled or not, and it should not be necessary or even proper, to have the bankrupt take the stand and testify that by certain entries in his schedule he intended to cover a certain debt. There is nothing in the evidence to suggest that any other debt was due to Charles Ferger, or that there was any other C. Ferger whose debt might be scheduled. It is respectfully submitted that the schedule shows on its face that the debt here sued upon was scheduled, and in view of the fact that the burden as to this issue was on the plaintiff and not on the defendant, the evidence is clearly in such condition as to necessitate a finding for the defendant on this issue. If there is a total lack of evidence, the fact that the burden of proof is on the plaintiff would necessitate a finding for the defendant. Such evidence as there is, indicates that the debt was properly scheduled.

Another proposition announced by the Appellate Court is, that the debt is not sufficiently scheduled because an initial was used instead of the full name. This contention of the Appellate Court ignores the previous decisions in

this state. In the case of *Bridges v. Layman,* 31 Ind. 384, a judgment was rendered against D. Bridges. It was said that the omission of the full christian name was an error which rendered the judgment irregular but not void. It would seem to follow if an initial is sufficient to support a judgment against a man, it should be sufficient for the purposes of a bankruptcy schedule. It is quite common for many business men to use initials instead of names, and so far as this evidence goes, Charles Ferger transacted all his business in the name of C. Ferger, and never used his full name, so that mail addressed to him as C. Ferger would be delivered as certainly as if his full name had been used.

The question here involved is not a state question, and we should not be confined to Indiana authority on the subject. The question is one of the interpretation of a national act of national application, and it is instructive, in considering such a law, to look at the authorities elsewhere as well as in Indiana, and when we do so we find several express decisions that initials are sufficient.

In the case of *Matteson v. Dewar,* 146 Ill. App. 523, a debt was scheduled in the name of A. E. Matteson. This was held to be clearly a sufficient schedule although initials were used instead of names. In the case of *Finnell v. Armoura,* 117 Pac. 49, a debt was scheduled in the name of C. O. Finnell and L. J. Hutchens doing business as Finnell & Hutchens. No first names were given, yet the schedule was held sufficient. In the case of *Gatliff v. Mackey,* 104 S. W. 379 (Ky.) a debt was scheduled in the name of Green Gatliff when the creditor's full name was Green *A.* Gatliff. The schedule was held sufficient Another debt was scheduled in the names of A. C. Evans.

The man's name in fact was Tucker Evans. It was held that the scheduling was sufficient in the absence of a showing that Tucker Evans was not also known as A. C. Evans. In the case of *Longfield v. Minnesota, etc.,* 103 N. W. 706, a debt was owned by a man who was acting as receiver for a number of other creditors. The bankrupt scheduled the debt in the name of those beneficially interested, instead of giving the name of the receiver. It was held that this was a sufficient scheduling. These cases indicate clearly that the bankruptcy act is in general, being construed as meaning that the use of initials is sufficient in a schedule, and it is respectfully submitted that it should be sufficient. There is a large number of men who habitually use only initials and mail addressed to them by their initials is delivered just as certainly as mail addressed in their full name.

There are in the books, numerous cases where the name used in a schedule has been held insufficient in cases where the name as scheduled was erroneous. Such cases are not in point in the present discussion, for the reason that the schedule involved in this case was absoluetly correct as far as it went. The only question is whether it went far enough. It is of course obvious that mail which is addressed to a person whose name is wrongly given, will probably be misdelivered, but mail which contains an address which is absolutely right as far as it goes, probably will be delivered provided there is a reasonably sufficient address given to enable the postoffice department to find the man.

The cases relied upon by the Appellate Court on this issue we feel are not in point here. The case of *Bascom v. Toner,* 5 Ind. App. 229, and the case of *Shearer v. Peale & Co.,* 9 Ind. App. 282, are both cases in which the decision

is the result of the interpretation of Section 343, 1 Burns R. S. 1914, which undertakes to state what a complaint must contain. They are in other words, decisions which undertake to construe an Indiana statute dealing with an altogether different subject and couched in altogether different language and the result obtained is not in any way significant in the present discussion, and such cases are not entitled to nearly so much weight as cases from other states construing the bankruptcy act and involving the precise point now before the court.

The case of *Lowden v. Walpole,* 1 Ind. 319, is an ancient case involving a suit on a note. The plaintiff in his complaint alleged that he had the note of Andrew A. Lowden. The only evidence he introduced that he had the note of this man was in the introduction of a note signed "A. A. Lowden." It was held that this was not sufficient to entitle the plaintiff to judyment without some further evidence that the note sued upon was the note of the man sued. This case is not in point in the discussion here, for the reason that the burden of proof was different. In that case the burden of proof was on the plaintiff to prove that the man sued was the man who made the note. Under the bankruptcy statute as heretofore pointed out, the burden is on the plaintiff to prove that he is not C. Ferger, if he wishes to make that contention. If he wishes to contend that his debt was not properly scheduled in the mater of name, he must prove that he is not C. Ferger, and the defendant is not under any burden to prove that the plaintiff is C. Ferger. This difference in the burden of proof makes the case cited clearly inapplicable.

So far as we can discover, the cases dealing with the precise question now before the court, namely, cases deal-

ing with bankruptcy schedules under the present act are unanimous in holding that a name is sufficiently scheduled where initials are used, provided all the information given is exactly correct. Where misinformation is given a different situation arises.

The only other contention with reference to the schedule made so far, is that the residence of the creditor was not sufficiently stated. It was stated that the creditor resided in Indianapolis, and so far as the evidence goes, this was correct. The only contention made is that some street number should have been given. This contention we believe is without merit, and so far as the published reports go, seems to have already in substance been passed upon by the Supreme Court of the United States, in accordance with the present contention of the plaintiff in error.

In the case of *Miller v. Guasti,* 226 U. S. 170, it appeared that a bankrupt had stated in his schedule that the residence of a certain creditor was unknown except that he lived in California. The case was appealed from New York, and appears as the case of *Guasti v. Miller,* 203 N. Y. 259. In the report of the decision rendered in the Supreme Court of the United States, it does not appear what information the bankrupt in fact had as to the residence of his creditor, and the Supreme Court merely said that it appeared that the bankrupt did know the residence of the creditor and therefore his schedule was insufficient, but the report of the proceedings in the New York court indicates that the only information that the bankrupt had was that the creditor lived in Los Angeles There is no showing that the creditor knew any street number, yet both the New York court and the Supreme Court

of the United States held that it appeared that the bankrupt did know the creditor's address.

This would seem to indicate that those courts considered that knowledge of the ctiy in which the creditor lived was all the knowledge that was required by a schedule. In other words, when this court held that it appeared that the bankrupt in fact knew the creditor's address, it necessarily held that the creditor's address for the purposes of the schedule was Los Angeles. If there is no showing that the creditor know any more than this, it would seem to follow that the court considered that the name of the city alone without anything more, was the residence of the creditor, and all that was required by the schedule.

This case is especially in point for the reason that Los Angeles is a city of somewhere near the same size as Indianapolis. There are numerous cases to the effect that the name of a town without any street address is sufficient in a schedule, but we have not found any case where this point has arisen with reference to one of the larger cities. In the case of *Finnell v. Armoura,* 117 Pac. 49, it is held that a residence stated as Bingham, Utah, was sufficiently stated. In the case of *Northern, etc. v. Hartke,* 110 Minn. 338, it was held that where a creditor lived in Fargo, N. D., it was sufficient to state his residence as Fargo without more.

In the case of *Gatliff v. Mackey,* a creditor's residence was simply given as Clate, Kentucky, without any more definite address, and it was held sufficient.

In this case, since the bankruptcy schedule was filed in Indianapolis, Indiana, and the bankrupt lived here, there could be no question but what the Indianapolis referred

to was Indianapolis, Indiana, and consequently the lack of the name of a state was wholly immaterial, and we do not understand that any contention has heretofore been made on that subject.

The whole contention with reference to the subject of address was with reference to the lack of a street number, and on that subject we do not find any case which requires that a street number be given. It is obvious that in smaller towns no street number is necessary. There is nothing in the bankruptcy act which makes any distinction between big cities and small towns, and there is nothing in that act from which any line could be drawn determining when a city has reached such a size that a street number is required by the bankruptcy act. It is familiar to all that even in Indianapolis mail which is adressed to well known business concerns or business men, is delivered regularly without any street number, and many such concerns do not think it worth while to put any street number on their envelopes or letter heads. Kingan & Co., L. S. Ayres & Co., Bobbs-Merrill Co., Claypool Hotel Co., and a number of others could readily be mentioned who are clearly in the class of people whose mail is delivered as certainly without a street number as with it.

In these days when the postoffiice makes use of the city directory, it is also true that practically any man in the city who has been here some time and become a little known, will receive his mail regularly without any street address. Even people of as little prominence as lawyers, frequently receive mail simply adressed to the city, without delay. Here again it is to be noted that those cases in which a wrong address is given, are to be distinguished. The address which was given was right so far as it went,

and any defect in it was apparent on the face of the schedule. If the referee under his right to supervise schedules, had requested that the bankrupt supply a more definite address, the bankrupt might have been under a duty to do so, but in the absence of such demand from the referee, the bankrupt was entitled to consider that the address which he gave was sufficient. Any inadequacy in it was open to inspection, and if the notices being sent out by the referee were not being delivered, they would no doubt be returned to him and he would soon know it, and if he thought the address insufficient the burden was on him rather than the bankrupt to raise the objection.

So far as this evidence goes, this bankrupt gave all the information he had, and gave all which the bankruptcy act required him to give, and gave it correctly. Under such evidence he should be given the benefit of his discharge, and when the Appellate Court refused to do so, it deprived him of his rights under the Federal act.

From what has been said, it thus appears that the bankrupt when he filed his schedule made a complete defense which the state court was bound to respect but did not. The further evidence introduced by the bankrupt tended to support that defense rather than otherwise, and in so far as there was any lack of evidence on any subject, the burden of producing such evidence was on the plaintiff, and the plaintiff should suffer from the lack of such evidence and not the defendant. So far as the evidence went the plaintiff's debt was provable debt properly scheduled and discharged by the bankruptcy discharge, and under the doctrine of the case of *Hancock v. Farnum,* 176 U. S. 640, page 645, the state court was bound to give judgment for the defendant. That case holds that a certified copy of a

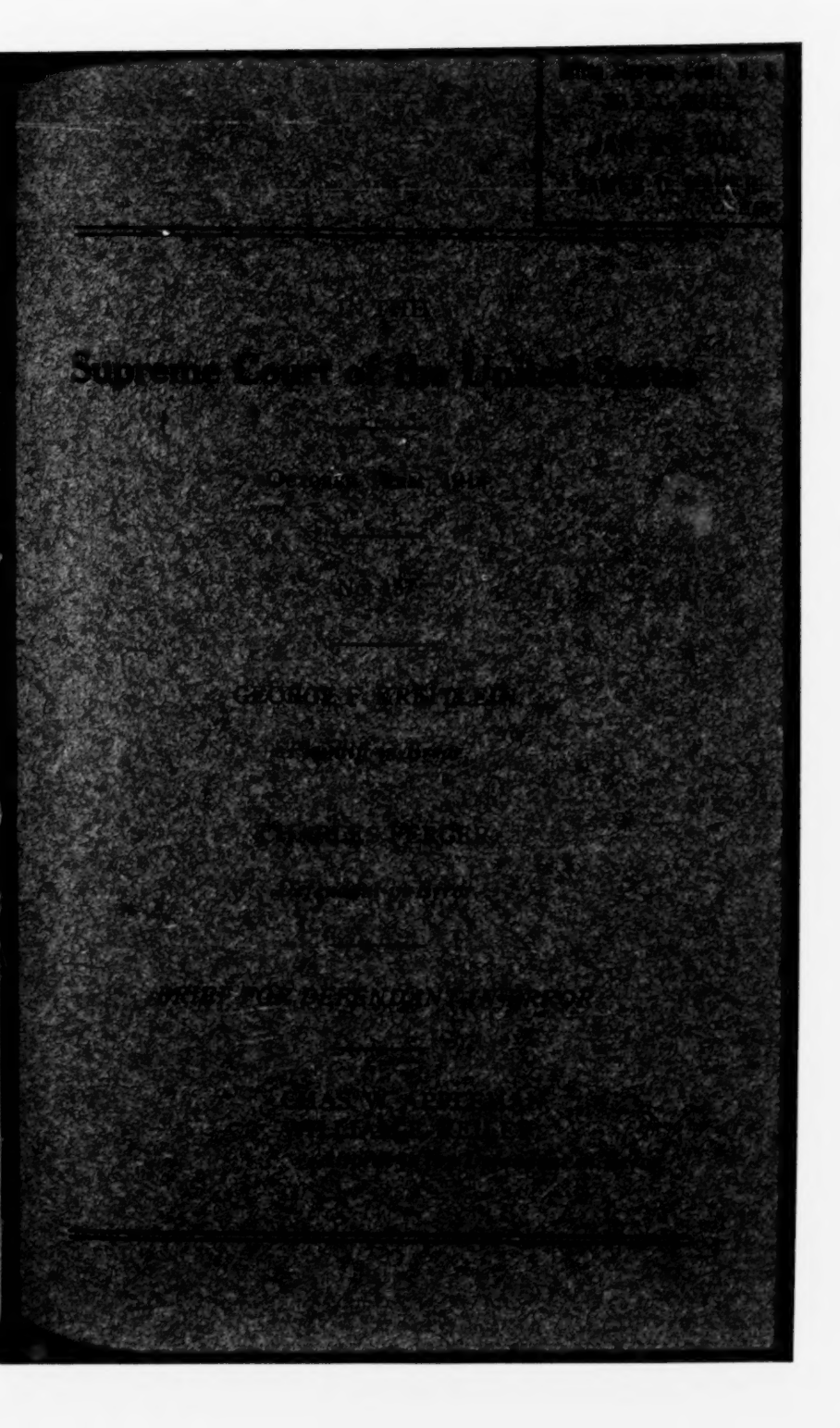
proceeding in the Federal Court is not only evidence in a state court, but is conclusive evidence, and that a state court is bound to respect this evidence and give it its proper legal effect.

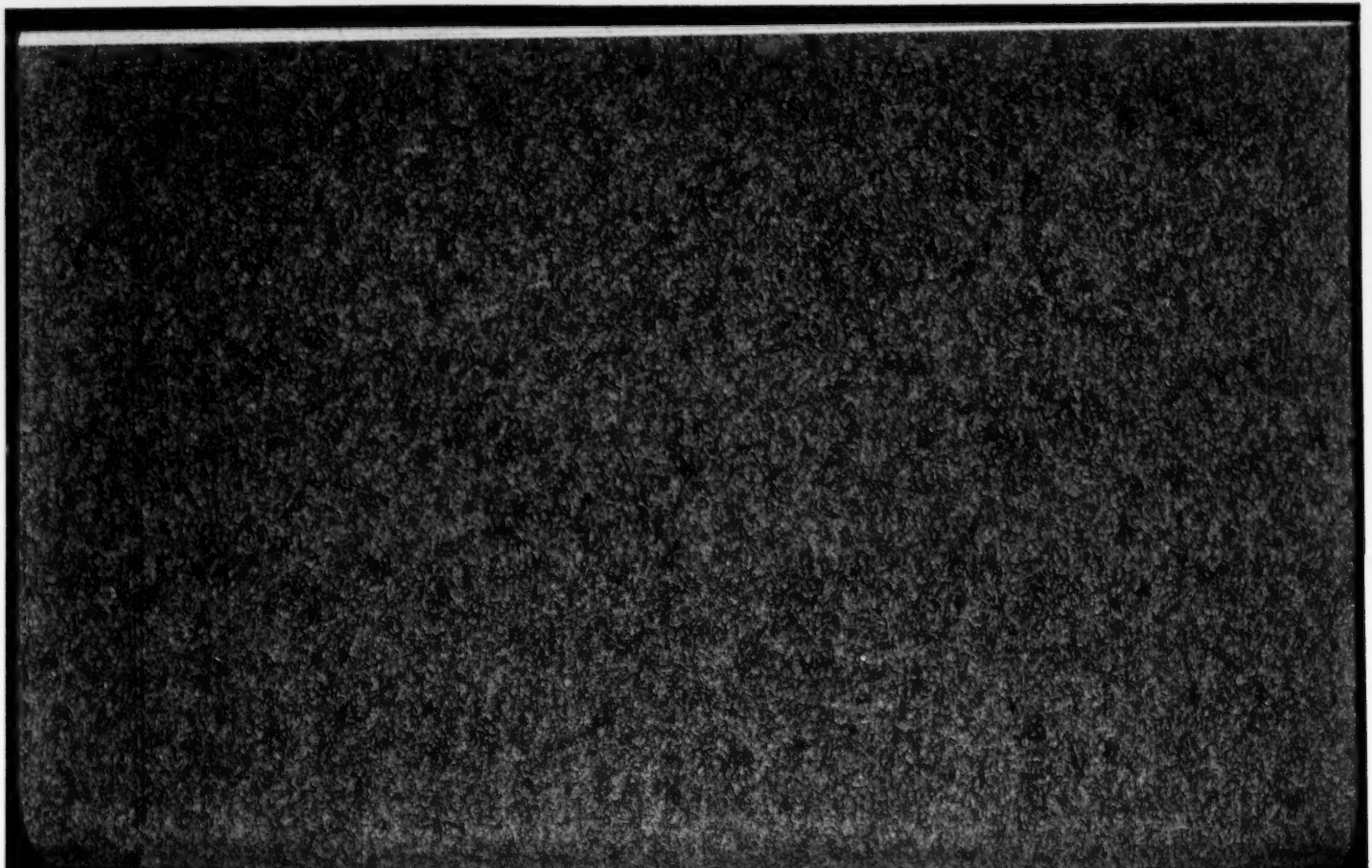
In this case the action of the Federal Court sitting in bankruptcy, in giving this bankrupt his discharge, terminated any further liability to pay the debt here involved, and thereafter no state court had any right to adjudicate otherwise when a duly certified copy of the discharge was produced in the state court.

It is, therefore, respectfully submitted that the action of the Appellate Court of Indiana should be vacated and set aside, and it should be held that it is the duty of the trial court to enter a judgment for the defendant in this case.

Respectfully submitted,

JOHN B. ELAM,
JAMES W. FESLER,
HARVEY J. ELAM,
Atorneys for Plaintiff in Error.





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IN THE

Supreme Court of the United States

IN ERROR TO THE APPELLATE COURT OF INDIANA.

OCTOBER TERM, 1914.

GEORGE F. KREITLEIN,
Plaintiff-in-Error,
v.
CHARLES FERGER,
Defendant-in-Error.

No. 157.

MOTION TO DISMISS THIS APPEAL.

Comes now defendant in error and moves the court and asks that this appeal to the Supreme Court of the United States be dismissed on the following grounds:

1. That no Federal question was decided by the Appellate Court of Indiana adversely to plaintiff-in-error.

2. The Federal questions sought to be raised in this court were not raised in the trial court, and under the practice in Indiana were not open to review in the Appellate Court of Indiana, and were not reviewed.

3. The Federal questions raised are without merit.

4. The decision of the Appellate Court of Indiana is sustainable upon non-Federal grounds.

5. That this appeal is vexatious and this appeal should be dismissed with penalty added.

CHAS. W. APPLEMAN,
WILLIAM E. REILEY.

ARGUMENT ON MOTION TO DISMISS.

We do not wish to cite authorities nor enter into an extended argument on this motion. The opinion of the court of Indiana is in the record at page 49, and discusses the following propositions:

1. As to the burden of proof. (Trans. Record, p. 52.)
2. As to the proposition of using the initial instead of the Christian name.
3. As to what is proper listing as to the address of creditors.
4. As to the proof of the answer.

The Indiana court decided just one of these propositions and the decision is based on the 4th proposition, to-wit: That Kreitlein failed to prove his answer. This is what the Indiana court says on that point as shown in the Record at page 54.

"But there is another reason why this judgment upon its merits is correct. Under the answers of appellant the burden was upon him to prove that the debt which he listed in his said schedule of creditor was the debt of appellee herein sued upon. The proof upon this subject shows that the debt *is* listed by appellant in 1905 in said bankruptcy proceeding was the debt of C. Ferger for $271.85 for merchandise. This suit was upon a judgment rendered on the 23rd day of November, 1897, for

$300, amounting at the time of the judgment herein to $508.50. The record of said former judgment showed it to be a judgment in tort "without exemption." There is no proof whatever showing that the C. Ferger whose name appears upon said schedule of the bankrupt is the Charles Ferger herein sued, or that said debt for merchandise bought in 1895 was any part of or in any way connected with said judgment for tort rendered some seven years before said debt on said schedule was so listed. There is no proof that in any way connects
82 the two debts as one and the same debt, unless it could be said that said answers to interrogatories furnish such proof, and we fail to see wherein they can be said to identify the two debts as one and the same debt."

Proposition 1, 2 and 3 all depend on the 4th, and if Kreitlein failed to connect the schedule with the person or debt sued upon, it does not make any difference upon whom rested the burden of proof, nor does it matter whether or not the matters in the schedule were in compliance with the bankruptcy act.

It has been decided many times by this court that where two courts passed upon the evidence, that this court would not consider it.

It is also very evident that this appeal is taken for the purpose of delay, and this court should add the penalty to the judgment.

We submit that this motion should be sustained and this appeal dismissed.

Respectfully submitted,

CHAS. W. APPLEMAN,

WILLIAM E. REILEY,

Attorneys for Defendant-in-Error.

BRIEF AND ARGUMENT.

The plaintiff in error gives eight assignments of error in this court.

The first assignment is that the Indiana court erred in holding that the discharge in bankruptcy did not constitute a valid defense.

The answer to this is that the court did not so hold. The decision of the Indiana court only decides that plaintiff in error did not prove his answer which set up his discharge in bankruptcy and this does not raise a Federal question for this court to decide. Where two courts have reviewed the evidence, this court will not consider it.

Hobbs v. Head & Dowst Co., 232 U. S. 692.

The second assignment of error, that the Indiana court erred in affirming the lower court, does not raise any Federal question, and for that reason we will not pursue it further.

The assignment of errors numbered 3, 4, 5, 6, 7 and 8 may be disposed of together.

The Indiana court held that there was no evidence to show that the debt in the schedule was in any way connected with the judgment sued on herein.

If this is true, and two courts have so held, then it does not matter about these assignments of error.

The answer of Kreitlein set up that the judgment sued on was barred by the discharge in bankruptcy. There was no evidence to sustain this answer, and so it becomes immaterial about these alleged errors, as the Indiana court did not decide them at all.

We respectfully submit that the judgment of the Indiana court should on all things be affirmed.

Respectfully submitted,

CHAS. W. APPLEMAN,

WM. E. REILEY,

Attorneys for Defendant-in-Error.

KREITLEIN *v.* FERGER.

ERROR TO THE APPELLATE COURT OF THE STATE OF INDIANA.

No. 157. Submitted January 22, 1915.—Decided June 1, 1915.

Under § 21 of the Bankruptcy Act of 1898, a certified copy of the order of discharge is evidence of the jurisdiction of the court making it, the regularity of the proceedings and of the fact that the order was made.

While the introduction of the order in discharge may make out a *prima facie* defense that case may be disproved by introduction by the defendant of the bankruptcy record, if the latter shows that the debt scheduled was not the same as the one sued on, was not a provable debt, was not properly scheduled, or that notice was not properly given to the creditor.

A judgment may be a provable debt even if rendered in a suit where the creditor elected to bring an action in trover as for a fraudulent conversion instead of assumpsit for a balance due on open account.

It is not a fatal defect because the schedule shows the debt as a balance on open account for merchandise instead of a judgment into which the liability for the merchandise had been merged, or because there may have been a difference between the amount of the original debt as scheduled and the amount of the judgment. In such a case the burden is on the creditor to show that the judgment was not the identical claim scheduled.

The Bankruptcy Act failing to prescribe the form of designation to be

used in listing creditors in the schedule, the use of an initial instead of the use of a full Christian name is not a fatal mistake.

While failure to comply with the statutory requirements to file a list of creditors showing their residence, if known, will render the discharge inoperative against those not receiving actual notice in time to have their claims allowed, *quære*, where the burden under § 17 (3) lies as to proving sufficiency or insufficiency of notice.

Bearing in mind that the Bankruptcy Act does not expressly require the use of initials and addresses, and that its general purpose is to relieve honest bankrupts, *held* in this case, that as no rules have been made as to addresses in the district in which Indianapolis is located, a schedule listing a creditor's residence simply as Indianapolis is *prima facie* sufficient.

THE facts, which involve the effect of a discharge in bankruptcy, the obligation of the bankrupt to schedule the debts of the creditor, and sufficiency of notice to the creditor, are stated in the opinion.

Mr. John B. Elam, Mr. James W. Fesler and *Mr. Harvey J. Elam* for plaintiff in error:

The Appellate Court denied plaintiff in error rights under the Federal bankruptcy law, and should have ordered a new trial on the ground that the evidence introduced by the defendant made a perfect defense to the action and that the evidence was not sufficient to support the finding and that the finding was contrary to law, because,

The evidence of the discharge in bankruptcy proved a complete defense to the debt proved by the plaintiff without any further evidence because,

Under the Indiana rules of practice, where the evidence is in the record and there is no contradiction in it, the Appellate Court will weigh it even in the interest of the appellant and in its discussion in this case the Appellate Court seems to accept this rule. *First National Bank* v. *Farmers Bank*, 171 Indiana, 323; *Riley* v. *Boyer*, 76 Indiana, 152.

A certified copy of an order granting a discharge should be evidence of the jurisdiction of the court, the regularity of the proceedings and of the fact that the order was made. Bankruptcy Act, § 21f; *Hays* v. *Ford*, 55 Indiana, 52; *Begein* v. *Brehm*, 123 Indiana, 160; *Hancock Bank &c.* v. *Farnum*, 176 U. S. 640, 645.

The debt established by the plaintiff in this case was a provable debt. Bankruptcy Act, § 63, a (1).

A discharge in bankruptcy releases the debtor from all provable debts when there is no evidence before the court that the debt belongs to any of the excepted classes. Bankruptcy Act, § 17.

If the plaintiff claimed his debt was within any of the exceptions to § 17, the burden was on him to prove it. *Goddin* v. *Neal*, 99 Indiana, 334; *Thompkins* v. *Williams*, 137 App. Div. 521, aff'd 206 N. Y. 744; *Anthony* v. *Sturdevant*, 56 So. Rep. 571; *Hallagan* v. *Dowell*, 139 N. W. Rep. 883; *Grocery Co.* v. *Teasley*, 53 So. Rep. 815; *Alling* v. *Stratka*, 118 Ill. App. 184; *Lafoon* v. *Kerner*, 138 N. Car. 281; *Van Norman* v. *Young*, 228 Illinois, 425, 430; *Bailey* v. *Gleason*, 76 Vermont, 115; *New York &c.* v. *Crockett*, 102 N. Y. Supp. 412; *In re Peterson*, 118 N. Y. Supp. 1077; *Gatliff* v. *Mackey*, 104 S. W. Rep. 379; 1 Stephen on Pleading, p. 120; Works' Indiana Pr. & Pl., § 365; *Sherwood* v. *Mitchell*, 4 Denio, 435; *Imhoff* v. *Whittle*, 81 S. W. Rep. 814.

Sorden v. *Gatewood*, 1 Indiana, 107; *Imhoff* v. *Whittle*, 82 S. W. Rep. 1056, are not persuasive authority.

The fact that the creditor did not have actual knowledge of the bankruptcy does not keep the discharge from being effective. *Wiley* v. *Pavey*, 61 Indiana, 457; Bankruptcy Act, §§ 17, 58; *Beck* v. *Crum*, 127 Georgia, 94.

The evidence introduced by the defendant in addition to the discharge in bankruptcy was sufficient in the absence of contradiction to prove that the plaintiff's debt was not within any of the class of debts excepted from the operation of the discharge, because:

The mere fact that the original judgment was given without exemption does not show that it is within any of the excepted classes. *Crawford* v. *Burke*, 195 U. S. 176.

Plaintiff's debt was properly scheduled, because the description of the debt given in the schedule, so far as it goes, is a description of the plaintiff's debt. *Matteson* v. *Dewar*, 146 Ill. App. 523.

The evidence, so far as introduced, showed that the debt was properly scheduled as to name. *Bridges* v. *Layman*, 31 Indiana, 384; *Matteson* v. *Dewar*, 146 Ill. App. 523; *Finnell* v. *Armoura*, 117 Pac. Rep. 49; *Gatliff* v. *Mackey*, 31 Ky. L. R. 947; *Longfield* v. *Minnesota &c.*, 103 N. W. Rep. 706.

Bascom v. *Turner*, 5 Ind. App. 229; *Schearer* v. *Peale*, 9 Ind. App. 282; 1 Burns' Rev. Stat. 1914, § 343, holding that an initial is not a name are cases founded on an Indiana statute dealing with the subject of pleading and not in point here and have no application in construing the Federal statute which cannot be affected by any Indiana statute.

So also as to *Louden* v. *Walpole*, 1 Indiana, 319.

The debt was duly scheduled with the residence of the creditor and it was not necessary to give any street address. *Miller* v. *Guasti*, 226 U. S. 170; *Guasti* v. *Miller*, 203 N. Y. 259; *Finnell* v. *Armoura*, 117 Pac. Rep. 49; *North Commercial Co.* v. *Hartke*, 110 Minnesota, 338; *Gatliff* v. *Mackey*, 31 Ky. L. R. 947.

No appearance for defendant in error.

Mr. Justice Lamar delivered the opinion of the court.

In 1897 Ferger brought suit against Kreitlein in an Indiana court. The pleadings in that case are not set out in the record and the nature of the suit does not appear except as it may be inferred from the special findings

of the jury, copied in this record, which show that 'when Kreitlein purchased the flour in November, 1895, he was insolvent. He made no false representations as to his financial condition . . . the plaintiff understood that the sale was for cash.' These answers, and the fact that the judgment was for "$300 damages" indicate that that suit was in the nature of an action of trover for the recovery of flour. This judgment rendered November 23, 1897, was not paid; and in 1907, ten years later, Ferger brought the present suit against Kreitlein on that judgment, alleging that it "was not for any debt growing out of or founded upon a contract express or implied." The defendant filed a plea that in 1905 he had received his discharge in bankruptcy.

At the trial the plaintiff introduced the judgment of 1897; testified that it had not been paid, and that 'until lately he did not know that Kreitlein had gone through bankruptcy, having had no notice of it.' The defendant then introduced a certified copy of his discharge, dated November 11, 1905. He also offered a copy of the record in the bankruptcy proceedings, including the "Schedule of Creditors," in which appeared an entry showing a debt in 1895 of $271.85, for merchandise, to C. Ferger, Indianapolis.

The plaintiff objected to the admission of this record "for the reason that the testimony shows that he [Ferger] has not had any notice of this bankruptcy proceeding . . . and for the further reason that this is an action on a judgment. The schedule shows that it is on an account. The records show that this was reduced to a judgment in 1897 and this schedule was not filed until 1905." The objection was overruled and the record admitted. No further evidence was offered and thereupon the court entered judgment for the plaintiff. That judgment having been affirmed by the Appellate Court of Indiana, the case was brought here by Kreitlein who in-

sists that by the Federal law he was relieved from liability on the pre-existing judgment.

1. Under the provisions of § 30 of the Bankruptcy Act this court has prescribed the form [59] of the "Order of Discharge" which, among other things, contains a recital that the bankrupt has been discharged from all provable debts existing at the date of the filing of the petition, "excepting such as are by law excepted from the operation of a discharge in bankruptcy." Section 21f further declares that a certified copy of such order "shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made." This provision of § 21f was made in contemplation of the fact that the Bankrupt might thereafter be sued on debts existing at the date of the filing of the petition in bankruptcy; and was intended to relieve him of the necessity of introducing a copy of the entire proceedings so that he might obtain the benefit of his discharge by the mere production of a certified copy of the order.

There are only a few cases dealing with the subject but they almost uniformly hold that where the bankrupt is sued on a debt existing at the time of filing the petition, the introduction of the order makes out a *prima facie* defense, the burden being then cast upon the plaintiff to show that, because of the nature of the claim, failure to give notice or other statutory reason, the debt sued on was by law excepted from the operation of the discharge. *Roden Co.* v. *Leslie*, 169 Alabama, 579; *Tompkins* v. *Williams*, 206 N. Y. 744, affirming the opinion in 137 App. Div. 521; *Van Norman* v. *Young*, 228 Illinois, 425; *Beck* v. *Crum*, 127 Georgia, 94; *Laffoon* v. *Kerner*, 138 N. Car. 281. Compare *Hancock* v. *Farnum*, 176 U. S. 645. There were some decisions to the contrary under the Act of 1841. Among them was *Sorden* v. *Gatewood*, 1 Indiana, 107, which held that when the bankrupt was sued on a valid claim he was obliged to show that the plaintiff's debt was

among those which had in law and in fact been discharged. It was probably because of this decision of the state court that the defendant Kreitlein felt compelled to offer the schedule in order to show that Ferger was one of the creditors listed in the bankruptcy proceedings. The issue now is whether the *prima facie* defense made out by the production of the certified copy of the Order was disproved by the introduction of the bankruptcy record. That question can best be answered by considering the various reasons the defendant in error advances in support of his contention that the discharge of 1905 did not operate to relieve Kreitlein from the debt now represented by the judgment of 1897.

2. On the part of Ferger it is said that this suit is on a judgment for $300 rendered in an action not "founded upon a contract express or implied"—and it seems to have been claimed that the judgment was not a provable debt within the meaning of § 63 (a. 4), of the Bankruptcy Act. But the special finding of the jury in that case showed that in purchasing the flour Kreitlein had not made any fraudulent concealment or misrepresentation as to his financial condition. Besides the judgment was a provable debt even though rendered in a suit where the creditor had elected to bring an action in trover, as for a fraudulent conversion, instead of *assumpsit* for a balance due on open account. *Crawford* v. *Burke*, 195 U. S. 176, 193.

3. Ferger next insists that there is a want of identity between the debt sued on and that said to have been discharged. This contention is based upon the fact that the schedule lists an 'account for merchandise for $271 in 1895 in favor of C. Ferger,' while the present suit is on a 'judgment for $300 damages rendered in favor of Charles Ferger in 1897.' The difference between the two amounts is probably explained by the fact that there had been an accrual of two years' interest before the judgment was rendered. Besides the books of the debtor and of the

creditor may not have exactly agreed and in the absence of fraud and injury such discrepancy would not invalidate the schedule or vitiate the effect of the discharge. Nor would the bankrupt be deprived of the benefit of the order because the debt was described as an 'account for merchandise' rather than as a judgment into which the liability for the flour had been merged. See *Matteson* v. *Dewar*, 146 Ill. App. 523, where it was held not to be a fatal defect for the Bankrupt to schedule the debt as an "account" even though a note had been given in settlement.

The *prima facie* effect of the order, to relieve the bankrupt from liability on all debts prior to 1905, was not defeated because there *may* have been a difference between the account and the judgment. The burden of showing that there was such difference was upon the creditor and in this case there was not only no evidence tending to sustain such a contention, but the two claims seem to have been treated as identical in the trial court, for there the objection to the admission of the Schedule was based on the contention that it referred to an account "which had been reduced to a judgment in 1897."

4. Another question—and the one on which the Appellate Court based its decision,—was whether the Schedule, listing the creditor as C. Ferger, Indianapolis—using an initial and omitting the street number of his residence—met the requirements of § 7 (8), making it "the duty of bankrupts to prepare, make oath to, and file . . . a list of his creditors showing their residences if known, if unknown that fact to be stated."

While this only involves a determination of what is a sufficient designation of a person's name and residence, yet it is one of those apparently simple questions which has been the occasion of an immense amount of controversy. The difficulty grows out of the impossibility of applying a general and uniform rule where there are so many varying

methods by which men's names and residences are designated. Some men have a well-known and constantly used Christian name; others are addressed by an abbreviation for the Christian name; others by initials for the Christian name; others are known by nickname. Some men use one name in business and another among their acquaintances. Some men, while personally addressed by their full Christian name, use initials in signing letters, notes, checks and other papers.

The Bankruptcy Act fails to prescribe which form of designation shall be used in listing creditors in the schedule. The statute must be construed in the light of the fact that it not only applies to transactions growing out of dealings between those personally acquainted, but, in large degree, relates to matters growing out of transactions between persons living in distant States and who may never have met. In many instances the only knowledge the debtor has as to the name of his creditor is derived from signatures, letterheads, drafts and like instruments—in which the name of the creditor may be designated by initials, or by abbreviation, or by a full Christian name. To say that the use of an initial in listing a creditor was improper when the creditor himself may have used an initial in signing letters addressed to the Bankrupt—or may himself have constantly received letters addressed to him in that manner—would not only ignore a common business practice, but would, in many instances, work a great hardship. This has been recognized in other branches of the law. For, while, of course, in all legal proceedings it is safest to designate persons by their Christian names,—and in some States this is even required by statute,—yet it has likewise been held that the use of the initial is an irregularity and not a fatal defect. *Queen* v. *Dale*, 17 Ad. & Ell. 64; *State* v. *Webster*, 30 Arkansas, 166; *Perkins* v. *McDowell*, 3 Wyoming, 203; *Minor* v. *State*, 63 Georgia, 320; *State* v. *Johnson*, 93 Missouri, 73.

There have, no doubt, been multitudes of instances in which initials have been used in listing creditors in Bankrupt schedules, but the only decision found which deals with this question is *Gatliff* v. *Mackey*, 104 S. W. Rep. 379 (Kentucky). It holds that the listing of the creditor by an initial, instead of the full Christian name, is not sufficient to deprive the debtor of the benefit of the order discharging provable debts. See also *Matteson* v. *Dewar*, 146 Ill. App. 523.

5. Of a like nature, and to be governed by the same principle, is the contention that, even if C. Ferger is a sufficient listing of the name, the schedule was fatally defective because it failed to give the street and number of his residence in Indianapolis. This objection is more difficult of solution than any of the others presented by this record. But, like them, it must be considered in the light of the fact that the statute was intended for business men and should receive not only a practical but a uniform construction. Its provisions are applicable to creditors who live in the country, in villages, in towns and cities. The statute is general in its terms and the courts cannot add to its requirements.

All of the cases dealing with the subject recognize the necessity of having claims properly listed, and point out that failure to comply with the statutory requirement to file a list of his creditors, showing their residence if known, will render the discharge inoperative against any who did not receive actual notice of the bankruptcy proceeding in time to have their claims allowed. *Columbia Bank* v. *Birkett*, 195 U. S. 345; *Troy* v. *Rudnick*, 198 Massachusetts, 567. The authorities, however, differ as to whether under § 17 (3) the burden is on the plaintiff to show that he had no notice, or on the bankrupt to show that the creditor had notice in time to have proved his claim and had it allowed. *Steele* v. *Thalheimer*, 74 Arkansas, 518; *Van Norman* v. *Young*, 228 Illinois, 430; *Alling* v. *Straka*,

118 Ill. App. 184 (2); *Hallagan* v. *Dowell*, 139 N. W. Rep. 883 (Iowa); *Parker* v. *Murphy*, 215 Massachusetts, 72; *Wineman* v. *Fisher*, 135 Michigan, 608; *Laffoon* v. *Kerner*, 138 N. Car. 285; *Fields* v. *Rust*, 36 Tex. Civ. App. 351; *Bailey* v. *Gleason*, 76 Vermont, 117, 118; *Custard* v. *Wigderson*, 130 Wisconsin, 414. In view of the scope of his testimony that he did not know of the Bankruptcy it is not necessary in this case to discuss that mooted point, unless it must be held that, because of the failure to set out the number of Ferger's house in Indianapolis, his claim was not duly scheduled.

The question as to the necessity of giving the street address has sometimes arisen in suits against endorsers, who claimed that they were relieved from liability because the notice of non-payment and protest was addressed to them at the city where they lived, but without adding the street and number of his residence. It seems generally to have been held that mailing a notice thus addressed is *prima facie* sufficient. *True* v. *Collins*, 3 Allen, 438; *Clark* v. *Sharp*, 3 M. & W. 166; *Mann* v. *Moors*, Ryan & M. 250; *Peoples Bank* v. *Scalzo*, 127 Missouri, 188; *Morton* v. *Westcott*, 8 Cush. 425; *Bartlett* v. *Robinson*, 39 N. Y. 187. See also *Bank of Columbia* v. *Lawrence*, 1 Pet. 578, 581; *Bank of United States* v. *Carneal*, 2 Pet. 550, 551. There are only a few instances, under the Bankrupt Act, in which the courts have had occasion to deal with the subject, or to construe § 7 (8),—requiring claims to be duly listed—, in connection with § 17, which provides that a discharge shall release the debtor from all provable debts "except such as . . . (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy. . . ." It has been held that a claim is not duly scheduled if the name of the creditor is improperly spelled (*Custard* v. *Wigderson*, 130

Wisconsin, 414); or if the street number is given but the name of the city of his residence is omitted (*Troy* v. *Rudnick*, 198 Massachusetts, 563); or if the creditor is listed as residing in one city when he actually lives in another (*Marshall* v. *English Co.*, 127 Georgia, 376): or if the creditor's name is given but the schedule falsely recites "Residence unknown" (*Birkett* v. *Columbia Bank*, 195 U. S. 345; *Miller* v. *Guasti*, 226 U. S. 170; *Parker* v. *Murphy*, 215 Massachusetts, 72). These decisions, however, were based on extrinsic proof and on a finding that, as a matter of fact, the name was misspelled, or the creditor's residence was improperly listed, or that the bankrupt knew the creditor's address and falsely stated that the residence was "Unknown." None of them holds that, as a matter of law, the discharge was rendered inoperative merely because the street number was not given in the schedule.

6. Indeed, it is not claimed that the Act requires that this street address should be stated in every instance where the creditor lives in a city having a Postal Delivery System. *Evans* v. *Fleuring*, 62 Kansas, 813. But, it is argued, that this should be done where he resides in one of the very large cities of the country. And we find that in some Districts the Referee examines the schedule and, in his discretion, requires it to be amended so as to give the street number (*In re Brumelkamp*, 95 Fed. Rep. 814; *In re Dvorak*, 107 Fed. Rep. 76). We also find that the Bankruptcy Rules of force in the Southern District of New York provide (italics ours) that the schedules "as respects creditors *in the city of New York*, should state the street and number of their residence, or place of business so far as known." *Widenfeld* v. *Tillinghast*, 54 Misc. N. Y. 93. See also *Cagliostro* v. *Indelle*, 17 A. B. R. 685; *McKee* v. *Preble*, 138 N. Y. Supp. 915.

But without considering the effect of such Rule, it is sufficient to say that, in the present case, there was nothing to show that any similar regulation had been made in the

Indiana District, nor is there proof as to what was Ferger's street address; or that Kreitlein knew such address at the time he made the schedule; or that the notice may not have been delivered during Ferger's absence from the city and not received by him on his return. Nor is there any evidence to show that Ferger did not constantly and promptly receive letters addressed to him at Indianapolis without the street number being given.

7. It is said that Kreitlein might have examined the Directory, but the suggestion presupposes that at the time of making the schedule the bankrupt had access to a directory and overlooks the fact that even if the address given therein was correct when made, the creditor may have moved before the book was issued so that if notice was mailed to an incorrect street address the creditor might contend that such specific address was not required by statute and that the burden of the mistake was cast on the bankrupt. We are here dealing with a general rule applicable to cases where the parties reside in different parts of the country as well as to instances where they lived in the same city. The rule is the same as to both. There certainly is no presumption that bankrupts have access to directories containing the street addresses of their creditors throughout the land; and, if the fact was essential, the question as to whether the bankrupt had access to a directory, or whether it was correct, were matters of proof, none of which was made in the present case.

8. Both as to the use of initials and omission of street address the Act must be given a general construction and in the light of the fact that letters directed to persons by their initials are constantly, properly and promptly delivered in the greatest cities of the country even when the street number is not given. When it is considered that the schedule must not only include claims of recent origin but debts which have accrued many years before and where the creditor may have changed his residence,

it becomes evident that to lay down the general rule that the schedule must give the name of the creditor and the city and street number of the residence of those living in the largest cities would, in a multitude of cases, destroy the beneficent effect of the Bankruptcy Act.

These schedules are often hurriedly prepared, long after the date of the transaction out of which the debt grew, and when books and papers, which might otherwise have furnished a fuller and more complete address, have been lost or destroyed. Bearing in mind the general purpose of the statute to relieve honest bankrupts; considering that the Act does not expressly require the street address to be stated or the residence to be given unless known; and giving proper legal effect to the Order of Discharge, we hold that a schedule listing the creditor's residence as Indianapolis is, at least, *prima facie* sufficient. In view of this conclusion the judgment of the Appellate Court of Indiana is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE DAY, with whom concurred MR. JUSTICE MCKENNA, dissenting.

I am unable to agree with the conclusion just announced. It seems to me to establish a rule by which many creditors will find their debts paid by a discharge in bankruptcy when they have had no knowledge or means of knowing that such proceedings were pending, and are not able to participate in such dividends as are paid to creditors.

It is admitted in this record that Ferger, the creditor, had a provable claim against Kreitlein in the bankruptcy proceeding. After the institution of this suit, the defendant Kreitlein pleaded his discharge in bankruptcy, and the state court refused to permit it to avail as a defense, because it did not appear that Ferger's debt was properly

scheduled, or that he had been given the notice which the Bankruptcy Act declares shall be given to creditors of the pendency of the proceedings. The fact that Ferger had no notice of the proceedings is not contested. In that situation, under the Act of 1898, in order to bar the claim sued upon, it was essential for the bankrupt to show that he had complied with the act, in so far as he could, by giving or attempting to give Ferger notice of the pendency of the proceedings.

Under the Bankruptcy Act of 1867, creditors who had provable claims were barred by the bankrupt's discharge, although such creditors' names were omitted from the schedules or so incorrectly given that they had no actual notice of the bankruptcy proceedings, unless the omission or incorrect statement was fraudulent or intentional. (See the cases under the former act, collected in Black on Bankruptcy, § 727.)

As this court pointed out in *Birkett* v. *Columbia Bank*, 195 U. S. 345, the Act of 1898 devolved upon the bankrupt certain duties, "all directed to the purpose of a full and unreserved exposition of his affairs, property and creditors." Under § 7, he is required to prepare, make oath to, and file in the court, within ten days, a schedule of his property containing, among other things, "a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to." These schedules were to be in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee. "To the neglect of this duty," this court declared in the *Birkett Case*, "the law attaches a punitive consequence," which is set forth in § 17, and provides that "a discharge in bankruptcy shall release a bankrupt of all of his provable debts, except such as . . . have not been duly scheduled in time for proof and allowance,

with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy. . . ." It follows from this decision that, if a discharge is to have the effect to cancel the debt of a creditor who had no notice of the proceedings, the burden is upon the bankrupt to show a compliance with the Act. The provisions of the Act (§ 21f) making the certified copy of the discharge evidence of the jurisdiction of the court, the regularity of the proceedings and the fact that the order was made, should be read in connection with the provisions of § 17, excepting from the benefit of a discharge claims which the bankrupt has failed to duly schedule.

To this effect are a number of well considered cases in the state courts. In *Columbia Bank* v. *Birkett*, 174 N. Y. 112 (affirmed in 195 U. S. 345) the court, speaking through Judge Gray, said: "While there may be some difficulty in the way of the statutory construction, I think the plaintiff's claim has never been discharged, as the result of the bankruptcy proceedings. In my opinion, there are features in the present Bankruptcy Act which differentiate it from preceding acts and which indicate a legislative intent that greater strictness shall prevail in notifying the creditor of the various proceedings in bankruptcy. It is provided that the voluntary bankrupt must file 'a list of his creditors, showing their residences, if known,' and that notices must be sent to the creditors at 'their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed . . . by the creditors.' While in the previous act of 1841 and 1867, substituted service of notices by publication was provided for, in the present act it is actual notice that is required to be given. The schedule of debts, which the bankrupt is to file with his petition, furnishes the basis for the notices which the referee, or the court, is to give thereafter to the creditors, and thus the bankrupt appears

to be made responsible for the correctness of the list of his creditors. That he is to suffer, in the case of his failure to state the name of the creditor, to whom his debt is due, if known to him, seems to me very clear from the reading of Section 17 of the Act. That excepts from the release of the discharge all debts which 'have not been duly scheduled in time for proof and allowance, with the name of the creditor.' That is very emphatic language, and how is it possible to obviate its effect by the argument that the plaintiff still had time left, after the discharge was granted, to prove his claim? . . . I think it was intended that the decree discharging the voluntary bankrupt should be confined in its operations to the creditors who had been duly listed and who were enabled to receive the notices which the act provides for."

In *Parker* v. *Murphy*, 215 Massachusetts, 72, this question was discussed, and the court said:

"Section 17 of the bankruptcy act provides that a discharge in bankruptcy shall release the debtor from all provable debts 'except such as . . . have not been duly scheduled' . . . unless such creditor had notice or actual knowledge of the proceedings in bankruptcy." Claims are not duly scheduled unless the names of the debtor's 'creditors showing their residences, if known,' are on the list of creditors filed. Section 7, cl. 8. The burden of proving that he did all things required of him under the bankruptcy law to give notice to the respondent creditor of the bankruptcy proceedings or that the latter had actual knowledge of them rests upon the plaintiff [the bankrupt] in this case. *Wylie* v. *Marinofsky*, 201 Massachusetts, 583; *Wineman* v. *Fisher*, 135 Michigan, 604, 608.

"The requirement for duly scheduling the names and residences of creditors is a most important one. It is in compliance with the generally recognized principle that one shall not be barred of his claim without the oppor-

tunity of having his day in court. It is for the benefit of the creditors and in the interest of fair dealing with them and is to be construed in harmony with this purpose. It is essential in order that notices in the bankruptcy proceeding may be sent him. It has been construed with some strictness. *Birkett* v. *Columbia Bank*, 195 U. S. 345; *Custard* v. *Wigderson*, 130 Wisconsin, 412."

In *Custard* v. *Wigderson*, 130 Wisconsin, 412, the court said: "Under the bankruptcy law of 1867 this court held, in harmony with the general current of authority, that a debt is discharged even though not scheduled. . . . But it will be seen that under the act of 1867 debts not scheduled were not excepted from the operation of discharge, while under the bankruptcy act of 1898 they are. . . . This provision is a marked departure from former bankruptcy acts, and decisions, under such acts, to the effect that scheduling was not necessary in order to bring the debt within the order of discharge" are not pertinent. "The words of the present act, however, are plain and unambiguous, and there can be no doubt that they mean what they say; and, if so, unless the debt is duly scheduled in time for proof and allowance, or the creditor had notice or actual knowledge of the proceedings in bankruptcy, it is not affected by the discharge."

In *McKee* v. *Preble*, 138 N. Y. Supp. 915, the schedules had given the address as 212, 9th. Avenue, New York, which was the place of business. Plaintiff's residence was elsewhere, with the correct address given in the city directory, where the bankrupt might have discovered it with a slight effort. The creditor swore he received no notice. The discharge was held ineffective as against this creditor.

In *Cagliostro* v. *Indelle*, 17 A. B. R. 685, the residence, as stated in the schedules, was "Mulberry Street, New York City." Creditor's residence, in fact, was 141 Mulberry Street, where he had resided for fifteen years last past.

This fact appeared in the directory, and could have easily been discovered. It was held that the bankrupt did not use due effort to ascertain the address of the creditor, and the discharge did not affect this debt, the court saying: "I am satisfied that the petitioner, when he made up the schedules, failed to use due efforts to learn the street number of the judgment creditor, and that it was owing to such failure on his part that the judgment creditor received no notice. Such failure deprives him of the right to a discharge of such judgment. *Columbia Bank* v. *Birkett*, 174 N. Y. 112, 9 Am. B. R. 481; *Sutherland* v. *Lasher*, 41 Misc. 249, 11 Am. B. R. 780, affd., 87 App. Div. 633. It may be that, in the absence of other evidence, there is a presumption that the postal authorities would deliver a letter to the plaintiff addressed, simply, 'Mulberry Street,' without any addition of the street number; but such presumption cannot prevail as against the positive statement of the plaintiff that he never received such notice."

It seems to me that the same rule in scheduling creditors cannot be applied to those who reside in large cities, where it may be essential in order that the creditor receive notice that street and number shall be given, as is applied to creditors residing in small communities where the postal authorities may be presumed to know the residence of the creditor by a more general form of address.

If it is sufficient to give the name of the city without more, the bankrupt, when making out his schedules which are to be the basis of informing creditors of the proceedings, may have before him the list of his creditors, and the street and number of their addresses, but being only required to give the name and residence of the creditor, he may omit to state the street and number, although known.

It is true that in view of the efficiency of the postal service such notices may reach the creditor, and may inform him of the proceedings with the consequent opportunity to prove his claim; but, because of the omission of

street and number the notice may fail to reach the creditor, and the estate may be administered and divided without his knowledge or any opportunity to participate in the distribution. It seems to me that the only consistent conclusion in view of the provisions of the present Bankruptcy Act, requires that the consequences of such negligence of the bankrupt be visited upon him and not upon the innocent creditor. If the notice reaches the creditor, well and good; but if not, the loss should fall upon him upon whom the law has placed the burden of complying with the requirement to duly schedule the debt of each creditor, so far as known.

It is a question of due diligence in every case, with the burden of showing such diligence upon the bankrupt, and there is nothing in this case to show that Kreitlein did not know of Ferger's address in Indianapolis, nor is there a showing of diligence on his part to discover what it actually was if in fact it was unknown. In view of their former dealings it is fair to presume that Ferger's address was known to Kreitlein.

Obviously, the same rule may not apply to all places and of course the schedules showing street and number are only to be complied with so far as practicable. "Thus, failure to look in the city directory of a great city, both creditor and bankrupt being residents, is not due scheduling." 3 Remington on Bankruptcy, p. 2504.

"By far the most important schedule is that of creditors. Its purpose is three-fold: (a) to give the court information as to the persons entitled to notice, (b) to inform the trustee as to the claims against the estate and the considerations on which they rest, and (c) to an extent at least, to limit the effect of the bankrupt's discharge to parties to the proceedings. It follows that the requirements of the statute . . . should be strictly observed. . . . The names of creditors should be written with care. . . . Even greater care should be

observed in addresses. Schedules are defective if they do not contain the addresses of creditors, stating street and number, in case the creditors reside in large cities, or unless the schedules show that after diligent effort no better addresses can be obtained. If the residence cannot be ascertained, that fact must be stated, and the proper practice requires that the bankrupt shall state what efforts he has made to ascertain the residence." Collier on Bankruptcy, 9th ed., p. 234. To the same effect is 1 Loveland on Bankruptcy, 4th ed. 374.

It seems to me that in this case there is an utter lack of that diligence to ascertain and state the residence of the creditor which is required to give the discharge the effect of barring this claim.

Indianapolis is a large city. The imperfectly addressed notice never reached Ferger. Moreover Kreitlein had probable knowledge of Ferger's true address or might have obtained it by the exercise of due diligence. In my opinion the judgment of the Indiana court should be affirmed.

MR. JUSTICE MCKENNA concurs in this dissent.